CASE OF
PASSMORE WILLIAMSON.

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With respects of

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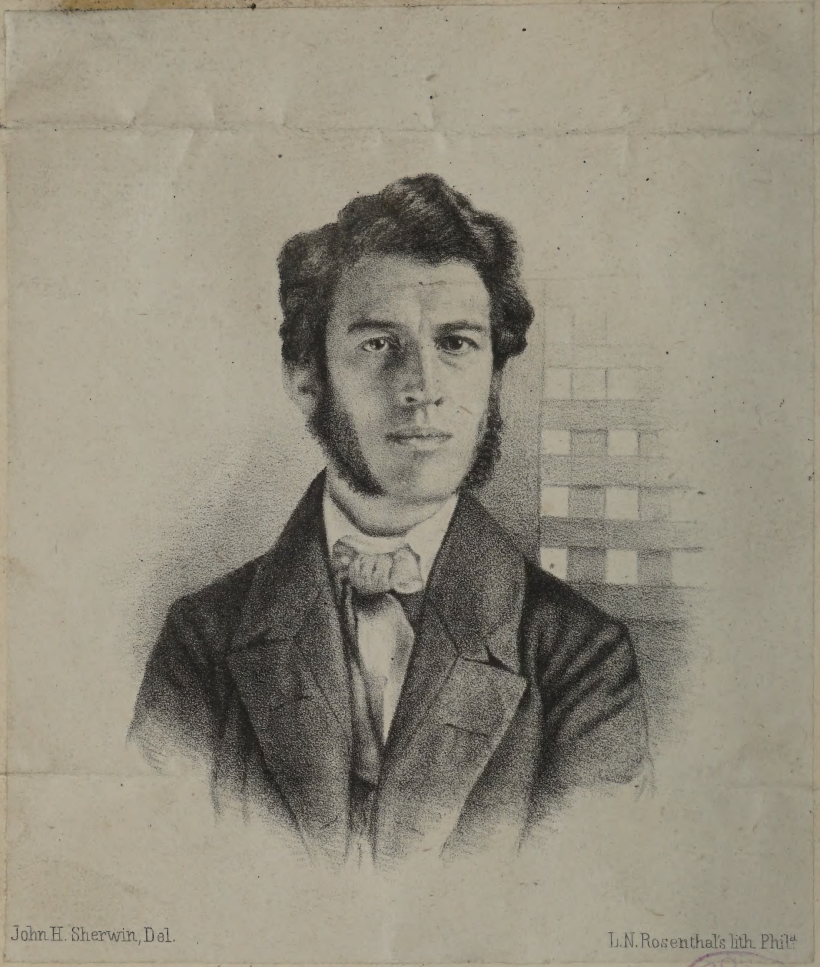

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PASSMORE WILLIAMSON

INCARCERATED BY JUDGE KANE

In Moyamensing Prison Philad^a July 27^th 1855.

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CASE OF PASSMORE WILLIAMSON.

REPORT OF THE PROCEEDINGS

ON THE

WRIT OF HABEAS CORPUS,

ISSUED BY

THE HON. JOHN K. KANE,

JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA,

IN THE CASE OF

THE UNITED STATES OF AMERICA EX REL.

JOHN H. WHEELER vs. PASSMORE WILLIAMSON,

INCLUDING

THE SEVERAL OPINIONS DELIVERED;

AND

The Arguments of Counsel, Reported by Arthur Cannon, Esq., Phonographer.

PHILADELPHIA:
URIAH HUNT & SON, N. FOURTH STREET.
1856.

Dep. 3672.E v 4254.7
In hoc xx

313.788

W. Phillips
July 19, 1882.

THE

CASE OF PASSMORE WILLIAMSON.

In the matter of the U. S ex rel. J. H. WHEELER vs. PASSMORE WILLIAMSON, the proceedings were begun by petition presented to the Hon. J. K. Kane, Judge of the District Court of the U. S. at Chambers, on the 18th day of July, 1855. The petition is in the following words, viz:

To the Honorable John K. Kane, Judge of the District Court of the United States, in and for the Eastern District of Pennsylvania.

The Petition of JOHN H. WHEELER, respectfully represents:

That your Petitioner is the owner of three persons held to service or labor by the laws of the State of Virginia, said persons being respectively named Jane, aged about thirty-five years, Daniel, aged about twelve years, and Isaiah, aged about seven years, persons of color; and that they are detained from the possession of your Petitioner by one Passmore Williamson, resident of the City of Philadelphia, and that they are not detained for any criminal or supposed criminal matter.

Your Petitioner, therefore, prays your Honor to grant a writ of habeas corpus to be directed to the said Passmore Williamson, commanding him to bring before your Honor the bodies of the said Jane, Daniel and Isaiah, to do and abide such order as your Honor may direct.

JOHN H. WHEELER.

Sworn to and subscribed, July 18, 1855.

CHAS. F. HEAZLITT, U. S. Com.

Thereupon, a writ of *habeas corpus* as prayed for, was allowed, returnable the next day at 3 o'clock P. M., at the U. S. Court room, before the Hon. J. K. Kane.

At the appointed time and place, viz: Thursday, July 19, at 3 o'clock P. M., EDWARD HOPPER, Esq., appeared before Judge Kane, (Col. Wheeler being present, accompanied by his counsel,) and stated:

That he had been called upon by Thomas Williamson, father of the respondent, who brought with him the writ of *habeas corpus*, which he now had in his hand. That Passmore Williamson was absent from the city, having gone to Harrisburg on private business. That said writ was left at the office of Thomas Williamson & Son; the respondent was absent, and it could not be considered as a service of the writ; but he (Mr. H.) appeared at the instance of Thomas Williamson, out of respect to the process of the Court, and would say, that the respondent was expected home that night, and would, on his return, doubtless respond to the writ.

J. C. VANDYKE, Esq., for relator, then moved the Court for an alias writ of *habeas corpus*, returnable at the earliest convenient time.

The Court allowed the alias writ, returnable the next morning at 10 o'clock; which was issued as follows, viz:

UNITED STATES,
Eastern District of Pennsylvania, } *SS.*

[SEAL]
J. K. KANE.

The President of the United States
TO
Passmore Williamson.

Greeting: We command you, as before we commanded you, that the bodies of Jane Daniel and Isaiah, persons of color, under your custody, as it is said, detained, by whatsoever names the said Jane Daniel or Isaiah, or either of them, may be detained, together with the day and cause of their being taken and detained, you have before the Honorable John K. Kane, Judge of the District Court of the United States in and for the Eastern District of Pennsylvania, at the Room of the District Court of the United States in the City of Philadelphia, immediately, then and there to do submit to and receive, whatsoever the said Judge shall then and there consider in that behalf.

Witness the Honorable John K. Kane, Judge of said Court at Philadelphia, this nineteenth day of July A.D. 1855 and in the eightieth year of the Independence of the said United States.

CHAS. F. HEAZLITT, for Clerk Dist. Ct.

On Friday, July 20th, at 10 o'clock A. M., the respondent Passmore Williamson, accompanied by his counsel EDWARD HOPPER, ESQ., appeared in Court and made return to the alias writ, under affirmation, in the following words:

To the Honorable J. K. Kane, the Judge within named:

Passmore Williamson, the defendant in the within writ mentioned, for return thereto, respectfully submits that the within named Jane

Daniel and Isaiah, or by whatsoever names they may be called, nor either of them, are not now, nor was, at the time of the issuing of said writ or the original writ, or at any other time, in the custody power or possession of, nor confined nor restrained their liberty by him the said Passmore Williamson. Therefore he cannot have the bodies of the said Jane Daniel and Isaiah, or either of them, before your Honor, as by the said writ he is commanded.

P. WILLIAMSON.

The above named Passmore Williamson being duly affirmed, says that the facts in the above return set forth are true.

P. WILLIAMSON.

Affirmed and subscribed before me this 20th day of July, A. D. 1855.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Mr. VANDYKE, counsel for Mr. Wheeler, asked the Court to permit him to offer testimony to rebut the statements of the respondent in his return.

Mr. HOPPER for respondent, contended that the return was sufficient and conclusive, and, as it was a complete denial of the custody, power or control, they could not go behind it.

Mr. VANDYKE replied by stating what he was prepared to prove.

Mr. HOPPER said, that if testimony was to be heard in the case, he would ask for time to prepare; that the course which the case had taken was certainly a surprise; that his client had returned the night before after one o'clock, which had given him a very meagre opportunity for consultation; that he had seen him but for a few minutes while the return was being prepared.

Judge KANE remarked, that if the bodies of the three servants were produced in Court, the question of time for preparation could be considered. The conduct of those who interfered with Mr. Wheeler's rights, was a criminal, wanton and cruel outrage. If the testimony would show that the defendant had been guilty of contempt in the return made to the *habeas corpus*, he might, as a committing magistrate, feel it to be his duty to hold the defendant to answer for perjury, without hearing testimony in defence. It would be sufficient to have a *prima facie* case made out.

Messrs. VANDYKE and WEBSTER for Col. Wheeler stated, that if

the servants were produced in Court, no objection would be made to giving time to the defendant.

Judge KANE overruled the motion for time and said he would now hear testimony.

C. GILPIN, Esq. came into the case just at this moment, as counsel for the respondent, and said that they had complied with the usual form in making a return to the habeas corpus, and that they had denied the custody now or at any time. If not deemed sufficient it would be necessary to take other steps or proceedings. The prosecutor had his remedy in a civil action for damages against the offending parties. The defendant desired to put in a complete return, and then be permitted to go without day as having made sufficient answer.

After some further remarks by respondent's counsel on technical points, Judge Kane said: A return has been made to the writ, and the counsel for the relator ask permission to traverse that return, having presented to the Court a certain state of facts, in opening, as a ground for the traverse. It has been settled by this Court, that the relator, where the truthfulness of the return is denied, and a different state of facts alleged to exist, may show those facts to the Court; that a person who has the possession or control of property will not be permitted, by an evasion or a manufactured return, to destroy the effect of this writ and render it powerless. In this case, a state of facts totally different from the return were alleged. Under these circumstances, the Court would hear the evidence traversing the return: and, second, the Court thought it its duty to ascertain and satisfy its conscience whether, if a different state of facts were established, it was not matter for the judicial notice of the Court sitting as a Committing Magistrate, if a *prima facie* case were made out, to bind the defendant over to answer on a charge of perjury.

Mr. WHEELER was then called.

Mr. GILPIN said that he should object to the examination of the witness, but there being no direct issues for trial before the Court, specific objections could not be made. He therefore left the matter with the Court, under a general objection.

John H. Wheeler, sworn. I am a native of the State of North Carolina, and a citizen thereof; I am the owner of three colored persons, named Jane Dan and Isaiah, and have been for some time; I hold them to labor under the laws of the State of N. Carolina, and of my country; I left Washington on Wednesday the 18th; I was under orders from my Government to proceed to the republic of Nicaragua forthwith; I have been the Minister for one year, and had returned with a couple of trea-

ties, and was upon my return to take passage from New York, in company with my three servants, whom I was taking to their mistress, who is now in Nicaragua; my wife is a native of Philadelphia, where I married her; I stopped at Bloodgood's to dine, having missed the 2 o'clock boat; I was sitting on the verandah talking to a friend.

I took the five o'clock boat, and proceeded to the hurricane deck, accompanied by my servants; there were a few persons only there; several ladies; while there the defendant, Passmore Williamson, stepped up to me, and asked me to allow him to have some conversation with my servants; I told him if he had anything to say he could say it to me; he laid his hands on the woman's shoulder very pointedly, and said, "Do you know that you are in a free State, and have only to go ashore to be free;" I told him they knew where they were going and with whom; the defendant said to me that he did not want to hear me talk, but would hear the woman; he asked her if she was a slave; she replied, yes; he said just step on shore and you are free; he pulled her by the arm, when she and her boys began to cry, and said they wanted to go with their master; several gentlemen stepped up and interfered; two negroes caught me by the collar, one on each side; one of them said to me, if you draw a weapon or make any resistance, I will cut your throat from ear to ear. A gentleman, who appeared to be a traveller, stepped up and told the negroes to release me; they did so; the defendant and they forced my servants on shore, and hurried them away; when the gentleman interfered I told him that I was in a country of laws, and that it could protect me in my person and property; I followed after them; they took my servants around into a street with a broad space, (Dock st.) where a hack was in waiting, and they forced them into it; I asked the defendant what they were going to do with my servants; he replied, that he would be responsible for any claim that I might have for the servants; he gave me his name as Passmore Williamson. I saw a policeman standing near, and I stepped up to him and asked him to take notice what was doing and who were the persons; the defendant stepped up to the officer and whispered something in his ear, when the officer replied, that he would have nothing to do with catching slaves; I told him that I did'nt want him to catch slaves, but only wanted him to take notice.

Thos. Wallace sworn. I am an officer; I saw the occurrence on the Avenue, but not on the boat; a crowd was coming down towards Dock street; I thought it was a fight, and went up; saw several negroes forcing along a colored woman who was holding back with all her strength, and two boys who were also struggling; they were all crying; four or

five black fellows had the boys; they said they were slaves, whom they were taking away; the defendant was following the crowd; saw him do nothing but follow after the negroes; the negroes were pushing the woman and boys along; they all pulled back; I followed to Dock street, and saw the negroes put the woman and boys in a carriage; I knew the negroes; the defendant whispered to me, and said that they were slaves —they were getting away—and asked me to protect them; I said that I would have nothing to do with the matter.

Robert T. Tumbleston, sworn. I am a travelling agent between Philadelphia and New York; I was standing on the forward part of the boat, and saw a crowd; I went forward, and saw a colored woman and two boys being forced ashore by some colored men; I know two of the men, Custiss and Ballard, who were very busy; they said the persons they had were slaves; Custiss said to Mr. Wheeler, that if he interfered he would cut his throat from ear to ear; Custiss had one of the boys by the arm; I followed a short distance and then returned.

Mr. Edwards, sworn. I take messages to the line and from it; I was on the wharf when this thing occurred; I saw two boys forced away by two colored men; the boy cried, and was struggling very hard to get away from those who held him; there were ten or fifteen negroes in the crowd.

Capt. Andrew Heath, sworn. Am in the employ of the Camden and Amboy Railroad Company; was on board the boat; saw a negro bringing a small boy down the stairs of the boat; the boy cried murder; there were twelve or fifteen negroes forcing the woman and two boys along in a crowd; the boys kicked and cried to get away; they said they wanted to go with their master; I saw the defendant walking along with them.

The testimony here closed, when Mr. VANDYKE said, that he had two motions to make; first, for an attachment against the defendant for making an insufficient return; and second, that he be held to answer for wilful and malicious perjury. Mr. VANDYKE urged his motion with argument, after quoting the act of Congress of 1825.

Mr. GILPIN asked for time.

Judge KANE said he would hear anything on the question of contempt, as that would cover the whole ground.

Mr. GILPIN thought they could put a different face upon the matter, as to the absconding or escaping of the servants.

Judge KANE said he would hear an argument now upon the evidence as it stands, or he would hear testimony for the defence.

Mr. HOPPER said that the defendant was not now prepared to say

that he had testimony to show a different state of facts. There was one witness that he might be able to get, but this was uncertain. Counsel would, therefore, ask until to-morrow, with a view of consultation and the examination of authorities.

Judge KANE said, that he had decided no question before him. There were two motions pending, and if the defendant was prepared to say what testimony he would be able to adduce, he could take the witness stand and state it under oath. If he would do this then it became a question for a continuance until to-morrow.

Mr. VANDYKE said, that the act of Congress provided for but one condition of things for a continuance.

The application for further time having been refused, Judge KANE said, that the respondent might now purge himself, but if he did not do so now, he would not have the opportunity afterwards.

After some consultation the counsel for respondent put him on the stand to purge himself of contempt.

Passmore Williamson, affirmed. I was informed that three slaves were at Bloodgood's Hotel, who wished to assert their right to freedom; I went to the hotel and saw a yellow boy on the steps fronting on Walnut Street; I made enquiry of him and he stated that such was the case, but referred me up stairs to one of the waiters for further information; the latter informed me that the slaves, with their master, had just gone on board the steamboat at the end of Walnut street wharf for the purpose of going to New York in the 5 o'clock line. I went on board the boat, looked through the cabin and then went up on the promenade deck; I saw that man, (pointing to Mr. Wheeler,) sitting sideways on the bench on the farther side; Jane was sitting next to and three or four feet from him,—the two children were sitting close to her; I approached her and said, "you are the person I am looking for I presume;" Wheeler turned towards me and asked what I wanted with him; I replied nothing, that my business was entirely with this woman; he said she is my slave, and anything you have to say to her you can say to me; I then said to her you may have been his slave, but you are now free, he brought you here into Pennsylvania, and you are now as free as either of us,—you cannot be compelled to go with him unless you choose; if you wish your liberty all you have to do is to walk ashore with your children. Some five minutes were consumed in conversation with Wheeler, Jane and a stranger, when the bell rang, and I told her if she wished to be free she would have to act at once, as the boat was about starting; she took one of her children by the hand and attempted to rise from her seat; Wheeler placed his hands upon her shoulders and prevented her; I then for

the first time took hold of her arm and assisted her to rise ; the colored people who had collected around us, seized hold of the two children, and the whole party commenced a movement towards the head of the stairs leading to the lower deck, Mr. Wheeler having at the start clinched Jane, and during the progress repeatedly and earnestly entreated her to say she wished to stay with him ; at the head of the stairway I took Wheeler by the collar and held him to one side ; the whole company passed down and left the boat, proceeding peacefully and quietly to Dock and Front streets, where Jane and her children with some of her friends entered a carriage and were driven down Front street ; I returned to my office. After the colored people left Dock street in the carriage, I saw no more of them,—have had no control of them, and do not know where they are. My whole connection with the affair was this.

Cross-examined. I heard of their being at the wharf at 4½ o'clock ; Wm. Still, a colored man, informed me ; he laid before me on my desk, at my office S. W. corner of 7th and Arch streets, a note stating the fact ; I told him to go down and get such information as might be necessary to telegraph to New York, as it was too late to obtain a writ of habeas corpus here, and I was too busy preparing to leave home that evening on important business to attend to it ; as he left, he enquired what there was to hinder them from leaving their master without the aid of legal process. After he had gone, I changed my mind and started for the wharf ; I got there first, but saw him coming down Walnut street as I left the hotel ; he came on board the boat and joined in the conversation with Wheeler, Jane and myself ; he was the sole person I knew there ; I saw him this morning ; we had some conversation about this case ; I asked him if they were safe and satisfied with what had been done ; he said they were, and would not return under any circumstances ; I did not enquire where they were, nor did he tell me. He is a clerk at the Anti-Slavery Office, in 5th street above Arch : I am Secretary of the acting committee of the Pennsylvania Abolition Society, as it is usually called.

At the conclusion of the cross-examination Mr. WILLIAMSON declared to the Court that in the proceedings he had not designed to do violence to any law, but supposed that he had acted throughout in accordance with the law, and the legal rights of the respective parties.

Mr. VANDYKE then addressed the Court.

After the conclusion of Mr. VANDYKE'S remarks, a short delay took place in consequence of a momentary and unavoidable absence of the respondent from the court-room. Upon his return, his counsel re-

marked to the Court, that they declined making any argument at this time, and must leave the matter with the Court.

Judge KANE said the case was so grave, and its consequences might be so very grave to the respondent, who might even pass into the condition of a prisoner, that he was desirous, before passing upon the two motions, to have time for reflection. In the mean time, bail might be taken in $5,000. for a further hearing on the second motion, (on the charge of perjury,) and the motion for contempt could go over.

He would also say at the risk of its being considered extra-judicial, that if it is in the power of the defendant to produce the bodies of the three persons, it would be better for him to do so. Judge KANE said in conclusion, that he would hold Mr. WILLIAMSON in $5,000 for a further hearing on this day week.

Bail was entered accordingly.

On July 27, 1855, Judge KANE delivered the following opinion :

The U. S. A. ex rel. Wheeler vs. *Passmore Williamson.—Sur. habeas corpus, 27th July*, 1855.

Colonel John H. Wheeler, of North Carolina, the United States Minister to Nicaragua, was on board a steamboat at one of the Delaware wharves, on his way from Washington, to embark at New York for his post of duty. Three slaves belonging to him were sitting at his side on the upper deck.

Just as the last signal bell was ringing, Passmore Williamson came up to the party, declared to the slaves that they were free, and, forcibly pressing Mr. Wheeler aside, urged them to go ashore. He was followed by some dozen or twenty negroes, who, by muscular strength, carried the slaves to the adjoining pier; two of the slaves at least, if not all three, struggling to release themselves, and protesting their wish to remain with their master; two of the negro mob in the mean time grasping Col. Wheeler by the collar, and threatening to cut his throat if he made any resistance.

The slaves were borne along to a hackney coach that was in waiting, and were conveyed to some place of concealment; Mr. Williamson following and urging forward the mob, and giving his name and address to Col. Wheeler, with the declaration that he held himself responsible towards him for whatever might be his legal rights, but taking no personally active part in the abduction after he had left the deck.

I allowed a writ of *habeas corpus* at the instance of Col. Wheeler, and subsequently an *alias;* and to this last Mr. Williamson made return that the persons named in the writ, "nor either of them, are

not now, nor was at the time of issuing of the writ, or the original writ or at any other time, in the custody, power or possession of the respondent, nor by him confined or restrained; wherefore he cannot have the bodies," etc.

At the hearing I allowed the relator to traverse this return; and several witnesses, who were asked by him, testified to the facts as I have recited them. The district attorney, upon this state of facts, moved for Williamson's commitment: 1, for contempt in making a false return: 2, to take his trial for perjury.

Mr. Williamson then took the stand to purge himself of contempt. He admitted the facts substantially as in proof before, made it plain that he had been an adviser of the project, and had given it his confederate sanction throughout. He renewed his denial that he had control at any time over the movements of the slaves, or knew their present whereabouts. Such is the case as it was before me on the hearing.

I cannot look upon this return otherwise than as illusory—in legal phrase, as evasive, if not false. It sets out that the alleged prisoners are not now, and have not been since the issue of the *habeas corpus*, in the custody, power or possession of the respondent; and in so far it uses legally appropriate language for such a return.—But it goes further, and by added words, gives an interpretation to that language essentially variant from its legal import.

It denies that the prisoners were within his power, custody, or possession *at any time whatever*. Now, the evidence of respectable, uncontradicted witnesses, and the admission of the respondent himself, establish the fact beyond controversy that the prisoners were at one time within his power and control. He was the person by whose counsel the so-called rescue was devised. He gave the directions, and hastened to the pier to stimulate and supervise their execution. He was the spokesman and first actor after arriving there. Of all the parties to the act of violence, he was the only white man, the only citizen, the only individual having recognized political rights, the only person whose social training could certainly interpret either his own duties or the rights of others under the constitution of the land.

It would be futile, and worse, to argue that he who has organized and guided and headed a mob to effect the abduction and imprisonment of others—he in whose presence and by whose active influence the abduction and imprisonment have been brought about, might excuse himself from responsibility by the assertion that it was not his hand that made the unlawful assault, or that he never acted as the gaoler.

He who unites with others to commit a crime, shares with them all the legal liabilities that attend on its commission. He chooses his company and adopts their acts.

This is the retributive law of all concerted crimes; and its argument applies with peculiar force to those cases in which redress and prevention of wrong are sought through the writ of *habeas corpus*. This, the great remedial process by which liberty is vindicated and restored, tolerates no language in the response which it calls for that can mask a subterfuge. The dearest interests of life, personal safety, domestic peace, social repose, all that man can value, or that is worth living for, are involved in this principle. The institutions of society would lose more than half their value, and courts of justice become impotent for protection, if the writ of *habeas corpus* could not compel the truth, full, direct and unequivocal, in answer to its mandate.

It will not do to say to the man whose wife or whose daughter has been abducted, "I did not abduct her; she is not in my possession; I do not detain her, inasmuch as the assault was made by the hand of my subordinates, and I have forborne to ask where they propose consummating the wrong."

It is clear, then, as it seems to me, that in legal acceptance the parties whom this writ called on Mr. Williamson to produce were at one time within his power and control; and his answer, so far as it relates to his power over them, makes no distinction between that time and the present. I cannot give a different interpretation to his language from that which he has practically given himself, and cannot regard him as denying his power over the prisoners now, when he does not aver that he has lost the power which he formerly had.

He has thus refused, or at least he has failed, to answer to the command of the law. He has chosen to decide for himself upon the lawfulness as well as the moral propriety of his act, and to withhold the ascertainment and vindication of the rights of others from that same forum of arbitrament on which all his own rights repose. In a word, he has put himself in contempt of the process of this Court, and challenges it action.

That action can have no alternative form. It is one too clearly defined by ancient and honored precedent, too indispensable to the administration of social justice and the protection of human right, and too potentially invoked by the special exigency of the case now before the Court, to excuse even a doubt of my duty or an apology for its immediate performance.

The cause was submitted to me by the learned counsel for the re-

spondent, without argument, and I have therefore found myself at some loss to understand the grounds on which, if there be any such, they would claim the discharge of their client. One only has occurred to me as perhaps within this view; and on this I think it right to express my opinion. I will frankly reconsider it, however, if any future aspect of the case shall invite the review.

It is this: that the persons named in this writ as detained by the respondent were not legally slaves, inasmuch as they were within the territory of Pennsylvania when they were abducted.

Waiving the inquiry whether for the purposes of this question they were within the territorial jurisdiction of Pennsylvania while passing from one State to another upon the navigable waters of the United States —a point on which my first impressions are adverse to the argument— I have to say—

1. That I know of no statute, either of the United States, or of Pennsylvania, or of New Jersey, the only other State that has a qualified jurisdiction over this part of the Delaware, that authorizes the forcible abduction of any person or anything whatsoever, without claim of property, unless in aid of legal process.

2. That I know of no statute of Pennsylvania which affects to divest the rights of property of a citizen of North Carolina, acquired and asserted under the laws of that State, because he has found it needful or convenient to pass through the territory of Pennsylvania.

3. That I am not aware that any such statute, if such a one were shown, could be recognized as valid in a Court of the United States.

4. That it seems to me altogether unimportant whether they were slaves or not. It would be the mockery of philanthropy to assert that, because men had become free, they might therefore be forcibly abducted.

I have said nothing of the motives by which the respondent has been governed; I have nothing to do with them; they may give him support and comfort before an infinitely higher tribunal; I do not impugn them here.

Nor do I allude, on the other hand, to those special claims upon our hospitable courtesy which the diplomatic character of Mr. Wheeler might seem to assert for him. I am doubtful whether the acts of Congress give to him, and his retinue, and his property, that protection as a representative of the sovereignty of the United States which they concede to all sovereignties besides. Whether, under the general law of nations, he could not ask a broader privilege than some judicial precedents might seem to admit, is not necessarily involved in the cause before me.

It is enough that I find, as the case stands now, the plain and simple grounds of adjudication that Mr. Williamson has not returned truthfully and fully to the writ of habeas corpus. He must, therefore, stand committed for a contempt of the legal process of the Court.

As to the second motion of the district attorney, that which looks to a committal for perjury, I withhold an expression of opinion in regard to it. It is unnecessary, because Mr. Williamson being under arrest, he may be charged at any time by the grand jury; and I apprehend that there may be doubts whether the affidavit should not be regarded as extra-judicial and voluntary.

Let Mr. Williamson, the respondent, be committed to the custody of the marshal without bail or mainprize, as for a contempt of the Court in refusing to answer to the writ of habeas corpus, heretofore awarded against him at the relation of Mr. Wheeler.

After the opinion had been delivered, Mr. GILPIN rose and addressed the Court, stating the propositions and conclusions of the Court in the opinion as he understood them from listening to the delivery of the opinion, and suggesting a motion to amend the return so as to conform to the views of the Court, and to preclude the argumentative conclusions deduced from the alleged surplusage, viz., the added words "*or at any other time.*" While he was addressing the Court, Mr. VANDYKE rose and made a motion for a commitment, under the seal of the Court. As he began to speak, the Court remarked, "*the District Attorney has precedence;*" and requested respondent's counsel, if they had any motion to make, to reduce it to writing. Mr. Gilpin proceeded, remarking that the motion of the District Attorney was not in writing, when the Court said, that his motion was already granted; and as there might be misapprehension as to some of the positions of the opinion, it would be best for respondent's counsel to wait until they could read and examine the opinion, which would be in print in the afternoon papers, before offering any motion to the Court.

Respondent's counsel regarded the intimation of the Court as conclusive against any immediate relief by the amendment suggested, and did not persist in it.

On the 31st day of July, 1855, a petition was presented by Messrs. GILPIN and BIRNEY to the Hon. ELLIS LEWIS, Chief Justice of the Supreme Court of Pennsylvania, praying for a writ of Habeas Corpus, as follows:—

To the Honorable Ellis Lewis, Chief Justice of the Supreme Court of Pennsylvania.

The petition of PASSMORE WILLIAMSON respectfully sheweth:

That your Petitioner is confined in the jail of the City and County of Philadelphia under certain warrants of commitment, copies of which are hereunto annexed. He also annexes hereunto a copy of the record of the proceedings upon which such warrant was issued. To be relieved from which imprisonment, your petitioner now applies, praying that a writ of habeas corpus, directed to the Keeper of the said prison and the said Marshal, may be issued according to the Act of Assembly in such case made and provided, so that your Petitioner may be brought before your Honor to do, submit to and receive what the laws may require.

P. WILLIAMSON.

County Prison, July 31*st*, 1855

The next day, to wit, on the 1st day of August, Chief Justice LEWIS filed the following opinion:

Commonwealth ex rel. P. Williamson vs. F. M. Wgnkoop, U. S. Marshal, and Chas. Hortz, Keeper of the Philadelphia County Prison.

This is an application for a writ of habeas corpus. It appears by the copies of the warrants annexed to the petition, that the prisoner is confined for a contempt of the District Court of the United States, "in refusing to answer a writ of habeas corpus, awarded by that Court against him at the relation of John H. Wheeler."

The counsel of Mr. Williamson very frankly stated, in answer to an interrogatory on the subject, that they did not desire the useless formality of the issuing of the writ of habeas corpus, if, on view of the cause of detainer exhibited, I should be of opinion that the adjudication of the U. S. District Court was conclusive. The habeas corpus act does not require the writ to be granted in all cases whatever. Whenever it appears upon the face of the petition, or, which is the same thing, by the detainer annexed to it and forming part of it, that the prisoner is "detained upon legal process, order or warrant, for such matter or offences for which by the law the said prisoner is not bailable," the case is excepted out of the act; see act 18th of Feb., 1785, sec. 1. In like manner, where the case has been already heard upon the same evidence by another court, the act of Assembly does not oblige the Judges to grant a habeas corpus for the purpose of rehearing it, although, perhaps, they may deem it expedient to do so in some extraordinary instances. Ex. parte Lawrence, 5 Bin. 304.

We come, therefore, at once to the cause of the detainer Is it a "legal

process, order or warrant for an offence which by law is not bailable?" Mr. Justice Blakstone, in Brass Crossby's case, 3 Wilson, 188, declared that "all Courts are uncontrolled in matters of contempt. The *sole* adjudication of contempts, and the punishment thereof in any manner, belongs *exclusively*, and *without interfering*, to *each respective Court*. Infinite confusion and disorder would follow if Courts could by writ of habeas corpus examine and determine the contempts of others. This power to commit results from the first principles of justice; for if they have the power to decide they ought to have the power to punish." "It would occasion the utmost confusion if every Court of this State should have the power to examine the commitments of the other Courts of the State for contempts; so that the judgment and commitment of each respective Court *as to contempts, must be final and without control.*" 3 Wilson, 304. This doctrine was fully recognized by the Court of Common Pleas in England, in the case referred to. It has since been approved of in numerous other cases in that country and in this.

In ex parte Kearney, 7 Wheaton, 38, it was affirmed by the Supreme Court of the United States, in accordance with the decision in Brass Crossby's case, 3 Wilson, 188, that, "when a Court commits a party for contempt, their adjudication is a conviction, and their commitment in consequence is execution." 7 Wheaton, 38, 5 Cond. Rep. 227. In the case last cited, it was also expressly decided, that "a writ of habeas corpus was not deemed a proper remedy where a party was committed for a contempt by a Court of competent jurisdiction; and that if granted, the Court could not inquire into the sufficiency of the cause of commitment." 7 Wheaton 38. Many authorities to the same effect are cited by Chief Justice Cranch, in Nugent's case, 1 American Law Journal 111.

But it is alleged that the District Court had no jurisdiction. It does not appear that its jurisdiction was questioned on the hearing before it. The Act of Congress of 24th September, 1789, gives it power to issue "writs of *habeas corpus* which may be necessary for its jurisdiction, and agreeably to the principles and usages of law;" and the same act expressly authorizes the Judge of that Court to grant writs of *habeas corpus* "for the purpose of inquiry into the cause of commitment; provided, that writs of *habeas corpus* shall in no case extend to persons in goal, unless where they are in custody under the authority of the United States or committed for trial before some Court of the same, or are necessary to be brought into Court to testify. Other acts of Congress give the United States Judges jurisdiction in writs of *habeas corpus* in cases therein specified. It does not appear that the writ issued for

persons in goal, or in disregard of State process or State authority. It may be that in an action at law, where the judgment of a United States Court is relied on as a justification, the jurisdiction should be affirmatively shown. But in a writ of *habeas corpus*, issued by a Judge having no appellate power over the tribunal whose judgment is shown as the cause of detainer, where the jurisdiction of the latter depends upon the existence of certain facts, and no objections to its authority are made on the hearing, the jurisdiction ought to be presumed, as against the party who might have raised the question at the proper time, but failed to do so. It is true that if the jurisdiction be not alleged in the proceedings, the judgments and decrees of the United States Courts are erroneous, and may, upon writ of error or appeal, be reversed for that cause. But they are not absolute nullities. If other parties who had no opportunity to object to their proceedings, and who could not have writs of error, may disregard them as nullities, it does not follow that the parties themselves may so treat them. Kempe's lessee vs. Kennedy, 5 Cr. 185; Skillern's Exec's., vs. May's Exec'r., 6 Cranch 267; McCormick vs. Sullivan, 10 Wheat. 192.

It is alleged that the right of property cannot be determined on *habeas corpus*. It is true that the *habeas corpus* act was not intended to decide rights of property; but the writ *at common law* may be issued to deliver an infant to a parent, or an apprentice to a master. Com. vs. Robinson, 1 S. & R., 35 B. On the same principle, I see no reason why the writ at common law may not be used to deliver a slave from illegal restraint, and to restore him to the custody of his master. But granting, for the purpose of the argument, (which I am far from intimating) that the District Judge made an improper use of the writ; that he erred in deciding that the prisoner refused to answer it—that he also erred in the construction of the answer which was given, and that he otherwise violated the rights of the prisoner; it is certainly not in my power to reverse his decision.

If a writ of *habeas corpus* had issued from a State Court to the United States Marshal, and that Court had adjudicated that the Marshal was guilty of a contempt in refusing to answer it, and committed him to prison, the District Court of the United States would have no power to reverse that decision, or to release the Marshal from imprisonment. No Court would tolerate such an interference with its judgments. The respect which we claim for our own adjudications, we cheerfully extend to those of other Courts within their respective jurisdictions.

For these reasons the writ of *habeas corpus* is refused.

August 1st, 1855. ELLIS LEWIS.

APPLICATION FOR A WRIT OF *HABEAS CORPUS*, TO THE SUPREME COURT, SITTING IN BANK, AT A SPECIAL* SESSION HELD AT BEDFORD, BEDFORD COUNTY, PENNSYLVANIA.

On Monday, the 13th day of August, 1855, Messrs. HOPPER and GILPIN appeared before the Supreme Court at Bedford, and presented the following petition; Chief Justice LEWIS and Justices LOWRIE, WOODWARD, KNOX and BLACK, being present:—

To the Honorable the Judges of the Supreme Court of Pennsylvania.

The petition of Passmore Williamson respectfully sheweth,—That your Petitioner is a citizen of Pennsylvania, and a resident of Philadelphia; that he is a member of "The Pennsylvania Society for Promoting the Abolition of Slavery, and for the Relief of Free Negroes Unlawfully held in Bondage, and for Improving the Condition of the African Race," incorporated by Act of Assembly passed the 8th day of December, A. D. 1789, of which Dr. Benjamin Franklin was the first President, and that he is Secretary of the Acting Committee of said Society.

That, on Wednesday, the 18th day of July last past, your Petitioner was informed that certain negroes, held as slaves, were then at Bloodgood's hotel in the city of Philadelphia, having been brought by their master into the State of Pennsylvania, with the intention of passing through to other parts. Believing that the persons thus held as slaves were entitled to their freedom by reason of their having been so brought by their master voluntarily into the State of Pennsylvania, the Petitioner, in the fulfilment of the official duty imposed upon him by the practice and regulations of the said Society, went to Bloodgood's hotel for the purpose of apprising the alleged slaves that they were free; and finding that they with their master had left said hotel, and gone on board the steamboat of the New York Line, then lying near Walnut street wharf, your Petitioner went on board the same, found the party, consisting of a woman named Jane, about 35 years of age, and her two sons, Daniel, aged about 12, and Isaiah, aged about 7, and, in the presence of the master, informed the said Jane that she was free by the laws of Pennsylvania; upon which she expressed her desire to have her

* By an Act of Assembly of 26th April, 1855, authority was given to the Supreme Court to order special terms to be holden at the seat of Justice of any County within the Commonwealth, for the purpose of hearing arguments, &c. See Pamphlet Laws, 1855, p. 305. Under this act a special term was held at Bedford, August 13th, 1855.

freedom, and finally, with her children, left the boat of her own free will and accord, and without any coercion or compulsion of any kind; and having seen her in possession of her liberty with her children, your Petitioner returned to his place of business, and has never since seen the said Jane, Daniel and Isaiah, or either of them; nor does he know where they are, nor has he had any connexion of any kind with the subject.

Your Petitioner used no violence whatever, except simply holding back Col. Wheeler, their former master, when he attempted by force to prevent the said Jane from leaving the boat. Some half dozen negroes, employed, as your Petitioner is informed, as porters and otherwise, at the wharf, and in the immediate neighborhood, of their own accord and without any invitation of the Petitioner, but probably observing or understanding the state of affairs, followed the Petitioner when he went on board the boat. An allegation has been made that they were guilty of violence and disorder in the transaction; your Petitioner observed no acts of violence committed by them, nor any other disorder than the natural expression of some feeling at the attempt of Col. Wheeler to detain the woman by force; that there was not any violence or disorder amounting to a breach of the peace, is also fairly to be inferred from the fact that two police officers were present, who were subsequently examined as witnesses, and stated that they did not see anything requiring or justifying their interference to preserve the peace. And your Petitioner desires to state explicitly that he had no pre-concert or connexion of any kind with them or with their conduct, and considers that he is in no way responsible therefor. Your Petitioner gave to Col. Wheeler at the time, his name and address, with the assurance that he would be responsible if he had injured any right which he had; fully believing at the time, as he does still believe, that he had committed no injury whatever to any right of Col. Wheeler.

On the night of the same day, your Petitioner was obliged to leave the city to attend an election of the Atlantic and Ohio Telegraph Company at Harrisburg, and returned to Philadelphia on Friday, the 20th of July, between 1 and 2 o'clock A. M. Upon his return, an *alias* writ of habeas corpus was handed to him, issued from the District Court of the United States, for the Eastern District of Pennsylvania, upon the petition of the said John H. Wheeler, commanding him that the bodies of the said Jane, Daniel and Isaiah he should have before the Hon. John K. Kane, Judge of the said District Court, forthwith. To the said writ your Petitioner, the same day, viz., the 20th day of July last

past, made return, that the said Jane, Daniel and Isaiah, or by whatever name they may be called, nor either of them, were not then, nor at the time of issuing said writ, or the original writ, or at any other time, in the custody, power, or possession of, nor confined nor restrained of their liberty, by your Petitioner; therefore he could not have the bodies of the said Jane, Daniel and Isaiah before the said Judge, as by the said writ he was commanded.

Whereupon and afterwards, to wit, on the 27th day of July aforesaid, it was ordered and adjudged by the Court, that your Petition r be committed to the custody of the Marshal, without bail or mainprize, as for a contempt in refusing to make return to a writ of habeas corpus theretofore issued against him at the instance of Mr. John H. Wheeler; all which appears by the record and proceedings in the said case, which your Petitioner begs leave to produce, and a copy of an exemplification of which is annexed to this petition. Thereupon, on the same day, a warrant was issued, commanding that the Marshal of the United States, in and for the Eastern District of Pennsylvania, forthwith take into custody the body of your Petitioner for a contempt of the Honorable the Judge of the said District Court, in refusing to answer to the said writ of habeas corpus, theretofore awarded against him the said Petitioner, at the relation of Mr. John H. Wheeler; a copy of which is hereto annexed, and also a warrant, by and from the Marshal of the United States, to the keeper of the Moyamensing Prison, a copy of which is also hereto annexed; under which warrants your Petitioner was committed to the said prison, and is now there detained, without bail or mainprize.

Notwithstanding the record is silent on the subject, your Petitioner thinks it proper to state that, on the return of the writ of habeas corpus, the Judge allowed the relator to traverse the said return by parol, under which permission the relator gave his own testimony, in which he stated that he held the said Jane, Daniel and Isaiah as slaves, under the laws of Virginia, and had voluntarily brought them with him, by railroad, from the city of Baltimore to the city of Philadelphia, where he had been accidentally detained at Bloodgood's hotel about three hours; and certain other witnesses were examined; from the testimony thus given, though not at all warranted by it or by the facts, the said Judge decided that your Petitioner had been concerned in a forcible abduction of the said Jane, Daniel and Isaiah, against their will and consent, upon the deck of the said steamboat, but admitting that your Petitioner took no personally active part in such supposed abduction after he had left the deck.

The hearing took place on the morning of Friday, the 20th of July, at 10 o'clock, your Petitioner having had the first knowledge of the existence of any writ of habeas corpus between 1 and 2 o'clock, on the same morning. Under these circumstances, before the said testimony was gone into, and afterwards, the counsel of your Petitioner asked for time, until the next morning, for consultation and preparation for the argument of the questions which might arise in the case, which applications were refused by the Court, and the hearing went on, and closed on the same morning between 12 and 1 o'clock.

On Tuesday, the 31st of July, 1855, your Petitioner presented to the Hon. Chief Justice of this Court, a petition for a habeas corpus, which was refused.

Inasmuch as your Petitioner is thus deprived of his liberty for an indefinite time, and possibly for his life, as he believes, illegally; inasmuch as he is a native citizen of Pennsylvania, and claims that he has a right to the protection of the Commonwealth, and to have recourse to her Courts for enlargement and redress, he begs leave respectfully to state some of the grounds on which he conceives that he is entitled to the relief which he now prays.

Whatever may be the view of the Court as to the probability of his discharge on a hearing, your Petitioner respectfully represents that he is clearly entitled to have a writ of habeas corpus granted, and to be thereupon brought before the Court. Upon this subject the Pennsylvania Habeas Corpus Act is imperative. Indeed, as the question of the sufficiency of the cause of his detention directly concerns his personal liberty, any law which should fail to secure to him the right of being personally present at its argument and decision, would be frightfully inconsistent with the principles of the Common Law, the provisions of our Bill of Rights, and the very basis of our government.

It is believed that no case, prior to that of your Petitioner, is reported in Pennsylvania, of a refusal of this writ to a party restrained of his liberty, except the case of *ex parte Lawrence*, 5 Binn, 304, in which it was decided that it was not obligatory on the Court to issue a *second* writ of habeas corpus where the case had been already heard on the same evidence upon a first writ of habeas corpus granted by another Court of the petitioner's own selection: in other words, that the statutory right to the writ was exhausted by the impetration and hearing of the first writ, and that the granting of a second writ was at the discretion of the Court. This case, therefore, appears to confirm strongly the position of your Petitioner that he is absolutely entitled at law to the writ for which he now prays.

On the hearing there will be endeavored to be established on behalf of your Petitioner, on abundant grounds of reason and authority, the following propositions, viz:—

1. That it is the right and duty of the Courts, and especially of the Supreme Court, of this Commonwealth, to relieve any citizen of the same from illegal imprisonment.

2. That imprisonment under an order of a Court or Judge not having jurisdiction over the subject matter, and whose order is therefore void, is an illegal imprisonment.

3. That the party subjected to such imprisonment has a right to be relieved from it on habeas corpus, whether he did or did not make the objection of the want of jurisdiction before the Court or Judge inflicting such imprisonment; and that if he did not make such objection, it is immaterial whether he were prevented from making it by ignorance of the law, or by the want of extraordinary presence of mind, or by whatever other cause.

4. That the Courts and Judges of the United States, are Courts and Judges of limited jurisdiction, created by a government of enumerated powers, and in proceedings before them the record must show the case to be within their jurisdiction, otherwise they can have none.

5 That if the record of any proceeding before them show affirmatively that the case was clearly without their jurisdiction, there can no presumption of fact be raised against such record for the purpose of validating their jurisdiction.

6. That no writ of habeas corpus can be issued to produce the body of a person not in custody under legal process, unless it be issued in behalf, and with the consent, of said person.

7. That at common law, the return to a writ of habeas corpus, if it be unevasive, full and complete, is conclusive and cannot be traversed.

8. That a person held as a slave under the laws of one State, and voluntarily carried by his owner for any purpose into another State, is not a fugitive from labor or service within the true intent and meaning of the Constitution of the United States, but is subject to the laws of the State into which he has been thus carried, and that by the law of Pennsylvania, a slave so brought into this State, whether for the purpose of passing through the same or otherwise, is free.

9. That the District Court of the United States has no jurisdiction whatever over the question of the freedom or slavery of such person, or of an alleged abduction of him, nor any jurisdiction to award a writ of habeas corpus commanding an alleged abductor or any citizen by whom he may be assumed to be detained, to produce him.

10. That in case of a fugitive from service or labor from another State, the District Court of the United States has jurisdiction to issue a warrant for the apprehension of such fugitive, and, in case he be rescued and abducted from his claimant, to proceed by indictment and trial by jury, against such abductor, and on conviction to punish him by limited fine and imprisonment; but even in the case of a fugitive slave, said Court nor the Judge thereof, has no jurisdiction to issue a writ of habeas corpus commanding the alleged abductor to produce such fugitive; or to enforce a return of such writ, or allow a traverse of the return thereof if made, or upon such traverse in effect convict the respondent without indictment or trial by jury, of such abduction, and thereupon punish him therefor by unlimited imprisonment, in the name of a commitment as for a contempt in refusing to return such writ of habeas corpus.

11. That generally, it is true, that one Court will not go behind a commitment by another Court for contempt; but that is only where the committing Court has jurisdiction of the subject-matter; and your Petitioner submits that where the circumstances of the supposed contempt are set forth upon the record of commitment, and it further appears thereupon that the whole proceedings were *coram non judice*, and that for that and other reasons, the commitment was arbitrary, illegal and void,—it is the right and duty of a Court of competent jurisdiction by writ of habeas corpus to relieve a citizen from imprisonment under such void commitment.

12. That neither the District Court of the United States nor the Judge thereof, had any shadow or color of jurisdiction to award the writ of habeas corpus directed to your Petitioner, commanding him to produce the bodies of the said Jane, Daniel and Isaiah, and that such writ was void:—that your Petitioner was in no wise bound to make return thereto:—that the return which he did make thereto was unevasive, full and complete, and was conclusive and not traversable:—that the commitment of your Petitioner as for a contempt in refusing to return said writ, was arbitrary, illegal, and utterly null and void:—that the whole proceedings, including the commitment for contempt were absolutely *coram non judice*.

13. That in such oppression of one of her citizens, a subordinate Judge of the United States has usurped upon the authority, violated the peace, and derogated from the sovereign dignity of the Commonwealth of Pennsylvania; that all are hurt in the person of your Petitioner; and that he is justified in looking with confidence to the authorities of his native State to vindicate her rights by restoring his liberty.

To be relieved, therefore, from the imprisonment aforesaid, your Petitioner now applies, praying that a writ of habeas corpus may be issued according to the Act of Assembly in such case made and provided, directed to Charles Hortz, the said Keeper of the said prison, commanding him to bring before your Honorable Court, the body of your Petitioner, to do and abide such order as your Honorable Court may direct.

And your Petitioner will ever pray, &c.

PASSMORE WILLIAMSON.

Moyamensing Prison, August 9th, 1855.

COPY OF RECORD.

To the Honorable John K. Kane, Judge of the District Court of the United States, in and for the Eastern District of Pennsylvania.

The Petition of JOHN H. WHEELER, respectfully represents:

That your Petitioner is the owner of three persons held to service or labor by the laws of the State of Virginia, said persons being respectively named Jane, aged about thirty-five years, Daniel, aged about twelve years, and Isaiah, aged about seven years, persons of color; and that they are detained from the possession of your Petitioner by one Passmore Williamson, resident of the City of Philadelphia, and that they are not detained for any criminal or supposed criminal matter.

Your Petitioner, therefore, prays your Honor to grant a writ of habeas corpus to be directed to the said Passmore Williamson, commanding him to bring before your Honor the bodies of the said Jane, Daniel and Isaiah, to do and abide such order as your Honor may direct.

JOHN H. WHEELER.

Sworn to and subscribed, July 18, 1855.

CHAS. F. HEAZLITT, U. S. Com.

And thereupon it is ordered by the Court, that a Writ of Habeas Corpus issue, directed to the said Passmore Williamson, commanding him to bring the bodies of the said Jane, Daniel and Isaiah, forthwith before the Honorable John K. Kane, Judge of said Court, the hearing thereof to be on the 19th day of July at 3 o'clock P. M., and thereupon, a Writ is issued in the words following to wit.

The President of the United States

[SEAL.] TO

Passmore Williamson.

We command you that the bodies of Jane, Daniel and Isaiah, persons of color, in your custody detained (as it is said) by whatsoever names they or each of them may be charged, together with the cause of their and each of their detention, you have before the Honorable John K. Kane, Judge of the District Court of the United States, at the room of the said Court in the City of Philadelphia, forthwith, then and there to do and be subject to whatever the said Judge shall consider in that behalf; and have you then and there this writ.

Witness the Honorable John K. Kane, Judge of said Court at Philadelphia, this Eighteenth day of July A. D. 1855, and in the Eightieth year of the Independence of the said United States.

Signed, CHAS. F. HEAZLITT,
for Clerk District Court.

ENDORSED.

U. S. A. Ex. Rel. John H. Wheeler

vs.

Passmore Williamson.

Habeas Corpus, Ret. 19 July, 1855, at 3 P. M.

On which said 19th day of July A. D. 1855, Mr. J. C. Van Dyke, for Petitioner, presents the affidavit of William H. Miller, Deputy Marshal, setting forth the manner of service of said writ, to wit, that it was left at the corner of 7th and Arch Sts., and no return being made to the said writ, Mr. Van Dyke moves for an alias writ to be directed to the said Passmore Williamson, and thereupon it is ordered that an alias writ do issue, returnable to-morrow morning at 10 o'clock, said writ to be served upon defendant at his place of residence. Which said writ is in the words following to wit.

UNITED STATES,
Eastern District of Pennsylvania, } *SS.*

[SEAL] J. K. KANE.

The President of the United States

TO

Passmore Williamson.

Greeting: We command you, as before we commanded you, that the bodies of Jane Daniel and Isaiah, persons of color, under your custody, as it is said, detained, by whatsoever names the said Jane Danie. or Isaiah, or either of them, may be detained, together with the day

and cause of their being taken and detained, you have before the Honorable John K. Kane, Judge of the District Court of the United States in and for the Eastern District of Pennsylvania, at the Room of the District Court of the United States in the City of Philadelphia, immediately, then and there to do submit to and receive, whatsoever the said Judge shall then and there consider in that behalf.

Witness the Honorable John K. Kane, Judge of said Court at Philadelphia, this nineteenth day of July A.D. 1855 and in the eightieth year of the Independence of the said United States.

CHAS. F. HEAZLITT, for Clerk Dist. Ct.

ENDORSED.

U. S. A. ex. rel. John H. Wheeler *vs.* Passmore Williamson, alias writ of habeas corpus. Returnable Friday 20th July, 1855, at 10 A. M. On which said 20th day of July, A. D. 1855, return is made to the said writ in the following words, to wit:

To the Honorable J. K. Kane, the Judge within named:

Passmore Williamson, the defendant in the within writ mentioned, for return thereto, respectfully submits that the within named Jane Daniel and Isaiah, or by whatsoever names they may be called, nor either of them, are not now, nor was, at the time of the issuing of said writ or the original writ, or at any other time, in the custody power or possession of, nor confined nor restrained their liberty by him the said Passmore Williamson. Therefore he cannot have the bodies of the said Jane Daniel and Isaiah, or either of them, before your Honor, as by the said writ he is commanded.

P. WILLIAMSON.

The above named Passmore Williamson being duly affirmed, says that the facts in the above return set forth are true.

P. WILLIAMSON.

Affirmed and subscribed before me this 20th day of July, A. D 1855.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Whereupon, afterwards, to wit, on the 27th day of July, A.D. 1855, the Counsel for the several parties having been heard, and the said return having been duly considered, it is ordered and adjudged by the Court that the said Passmore Williamson be committed to the custody of the Marshal, without bail or mainprize, as for a contempt in refusing

to make return to the writ of Habeas Corpus heretofore issued against him at the instance of Mr. John H. Wheeler.

UNITED STATES,
Eastern District of Pennsylvania.

I certify the foregoing to be a true and faithful copy of the record and proceedings of the District Court of the United States in and for the Eastern District of Pennsylvania, in a certain matter therein lately depending between the United States of America ex. rel. John H. Wheeler and Passmore Williamson.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia this thirtieth day of July, A. D. 1855, and in the eightieth year of the Independence of the said United States.

Seal of the Court.

CHAS. F. HEAZLITT,
for *Clerk Dist. Court.*

I certify the foregoing attestation to be in due form, and by the proper officer.

J. K. KANE,
Dist. Judge.

After tne reading of the petition the following motion was entered upon the minutes of the Court:—

Commonweath ex rel. PASSMORE WILLIAMSON vs. CHARLES HORTZ, *Keeper of Moyamensing Prison.* — *S. C. Sur Petition for Habeas Corpus.*

And now, to wit, on the 13th day of August, 1855, upon the reading of the said petition, this day filed, HOPPER, C. GILPIN and MEREDITH moved the Court to award a writ of habeas corpus, agreeably to the prayer of the said Petitioner.

The Court then assigned Thursday, the 17th day of August, 1855, for hearing the argument upon the motion.

Bedford, August 17th, 1855. Supreme Court. All the Judges present. The Hon. CHARLES GILPIN addressed the Court as follows:—

May it please your honors, I rise to the argument of this cause with some embarrassment, and a deep sense of the responsibility of my position. I shall endeavor to consume, however, as little time as possible, and in that little time it shall be my effort rather to prepare the way for one who, coming after me, is preferred before me, whose place I feel that I cannot fill on this occasion, to the satisfaction of the honorable Court, or of the intelligent audience which this important case has called together.

I am impressed on rising with a sense of want of preparation, for which the peculiar circumstances of the case must be my apology. I am impressed, also, with the peculiar feature presented by this case in its present stage, a feature most apparent, and made more apparent when this application for the writ of habeas corpus is contrasted with the recent application of Col. John H. Wheeler, of North Carolina.

I am the more impressed, too, with the importance of this discussion at this time, as it involves not only questions arising under the habeas corpus Act of Pennsylvania, and its imperative injunctions, and under the discretionary power of the Court to grant the writ at common law without the statute; but imposes on us the necessity of travelling beyond that through all the ramifications of the case, that nothing may be omitted which is deemed essential to the interests of our client, Passmore Williamson, who is now suffering imprisonment in the city of Philadelphia, who is not here, and who cannot be here, or before this Court, unless this writ be granted, to listen to what his counsel may say for him, to what his accusers may say against him, and to what the Court may consider and decree in his behalf.

I have said that this case presents, at this stage of it, a peculiar and somewhat startling feature—startling to the mind of the Pennsylvania lawyer. What is it? Why is it? This is a hearing upon an *application* for a *habeas corpus*. It is not a hearing upon a writ where the prisoner is brought before the Court in the free air, where he may hear and be heard, as is provided by our Bill of Rights; but it is a case of argument upon an application, and, to say the least of it, an application made under circumstances of uncommon hardship, for the *allowance* of the writ of *habeas corpus*.

How many writs of *habeas corpus* are granted in this great Commonwealth under the imperative injunctions of the act—how many under the discretionary power of the Court—as a matter of course, upon the application of any felon, of any pickpocket, and of any scurvy knave arrested within the limits of a great city, although no great principles are involved; that the prisoners may have a hearing; that they may be

brought before the Court to hear what is to be said touching their rights before their case is determined, and that they may be admitted to bail, if the case be bailable, or discharged if a *prima facie* case be not made out against them. But in a case of this importance, in which the sovereign power of the State has been usurped by the Federal Court, where the powers of the Pennsylvania judiciary have been invaded, and the trial by jury virtually superseded, where the proceedings and practice under the writ of *habeas corpus* at common law have been departed from, where unusual and most oppressive means have been adopted to incarcerate an individual who is still restrained of his liberty—in a case of this pressing moment, a man of undoubted character and high respectability now appears here by his counsel, before a full Court, presenting and pressing his application for this writ. The necessity for this is a somewhat startling feature to my mind, and to the mind of every Pennsylvania lawyer. Is it not rendered still more so, when we contrast it with the application of Col. John H. Wheeler, of North Carolina, to the Federal Court for a similar writ, which was granted without a hearing by a Court of limited jurisdiction, without any statutory obligation; as we allege, without any jurisdiction of the subject matter? Nay, more, this contrast renders this feature of the case still more remarkable. We have been taught to believe always that a *habeas corpus cum causa* is a writ *in favorem libertatis*. It is a writ which is supposed to emanate from the sovereign, for the enlargement and redress of his subject.

This is the theory and foundation of the writ, and the ground upon which it is claimed by Passmore Williamson. But the Federal Court has converted it into a writ *in favorem servitudinis*. Does not this stage of the case, then, present a somewhat startling feature to the mind of the Pennsylvania lawyer? Such an extension and perversion of the law of habeas corpus by a Judge of one of the Federal Courts, and the possibility of a refusal of this great writ by the Supreme Court of Pennsylvania to a citizen of Pennsylvania, actually restrained of his liberty, who appeals to his sovereign, the Commonwealth of Pennsylvania. through her Courts for enlargement and redress.

Let us turn to the petition of Col. John H. Wheeler, to see if I am right in making this contrast. I need not go over the petition of Passmore Williamson, for there stands upon the record a certified copy of his jailor, that he is restrained of his liberty; and he asks you here that he may have the writ of *habeas corpus* granted to him according to the act of Assembly. Whether his case meets the requirements of that act or not, we are yet to conisder.

What does Col. Wheeler say when he applies for this high prerogative writ to the Federal Court? Not a word which should bring his application within the act of Assembly of Pennsylvania, if that had been necessary. There is not a word in it that any party is restrained of his liberty. He alleges that certain persons, whom he claims to be his slaves, under the laws of another State, are detained from him by Passmore Williamson, but how, his petition does not say; there is not one word to indicate that any party is suffering from incarceration or deprivation of liberty. My conclusion, therefore is, that in the Federal Court every facility is afforded, even in doubtful cases, for the granting of the writ, and if there be doubt or danger, those matters are to be discussed at the time the writ is made returnable on the hearing. But in our State Courts, although there is an act imperative upon them to issue the writ, we are compelled to proceed slowly, cautiously and laboriously, beset with difficulties, and met with opposition at every stage of our proceedings. Permit me to allude to one of those obstacles, which I see in my path, before I proceed to discuss the principles that are involved in the case. I allude now to the opinion of the learned Chief Justice of this Court upon an application to him to award this writ. It is my purpose, if I can, to remove the impression which that opinion is calculated to make unfavorable to our case; an erroneous impression, permit me to say, with all respect, misleading the legal as well as the popular mind of the country. In doing so, it shall be with all respect and deference to the learned and estimable gentleman who occupies that place; and if, in the hurry of argument, anything shall escape me which may not be becoming the occasion, his position or my own, I am sure that it will be attributed to the zeal which I feel in behalf of one who is placed *in salva et arcta custodia*, rather than to any intentional disrespect to the Court which I now address.

We are told, may it please your honors, by the learned Chief Justice, that the issuing of this writ is not imperative upon the Court. It is not my purpose to read this opinion throughout, but there is one startling objection made by the learned Chief Justice which meets me almost upon the threshold, which, if it be valid, might be conclusive against the statutory right of the relator to the writ, and leave it discretionary with the Court as at common law. The Chief Justice remarks:

"The *habeas corpus* act does not require the writ to be granted in all cases whatever. Whenever it appears upon the face of the petition, or, which is the same thing, by the detainer annexed to it and forming part of it, that the prisoner is 'detained upon legal process, order, or warrant, for such matter or offences for which by the law the said prisoner is not bailable,' the case is excepted out of the act. See Act 18th February, 1785, Sec. 1."

If this position be correct, I shall have to abandon the ground that it was *obligatory* to issue the writ, and to admit that it was discretionary with the Court. But we contend that this application of this quotation from the act is a mistake and misapplication, and that those words used in the *habeas corpus* act are exclusively applicable to the regulation of the proceedings under the writ *after* it has been granted, and in no wise to the *granting* of the writ, or to the cases in which it is to be granted.

There are exceptions in this act of Assembly, and I want to allude to them. The act says: "If any person stand committed for any criminal or supposed criminal matter, unless for treason or felony." These are the only exceptions in the act, and they are in the first section. What is the reason of the exception? Our act is mainly a transcript of the act of 31 Charles 2d, chap. 2, which was intended to remedy certain great and crying evils. The writ had been in existence as a prerogative writ for a long time before; but judges at that time were dependent on the "powers that be." There was a great distinction between the commonalty and the judiciary, and Courts reposed very much on the bosom of the appointing power. They were very apt in cases of general warrants, to refuse the writ of habeas corpus under the discretion which they had. The case of Sir John Elliot, I think, was one of them, and the case of Jenks was another, the charges being contempt and inflammatory speeches derogatory to the government. There was no statutory provision compelling the judge to issue the writ, nor any means by which a prisoner so committed upon general warrant from the King in Council, or Secretary of State could be heard. The Judges neglected their duty, aud hence the passage of the habeas corpus act; these exceptions, treason and felony, were made, as is stated by Blackstone, because in all cases, excepting treason and felony, the general grant of the writ under the statute could not result in any inconvenience or detriment to the public or the government. There is no particular reason, perhaps, why these exceptions should have been put in our act, though perhaps there may be in the case of treason. But all felonies, except homicide, are now bailable; and the scurviest knave, the lowest pickpocket, and the meanest pilferer, though charged with felony, looks upon the grant of this writ, as a matter of course, while we, who are not within those exceptions, who are not charged with treason or felony, but within that large class embraced in the act, being all cases except treason and felony, are made to rest a long while before we are allowed to enter the portal of justice. Now if your honors will look at the first section of this act,

you will see that it applies to the allowance of the writ. It is in these words :—

"1. If any person shall be, or stand committed or detained for any criminal, or supposed criminal matter, unless for treason or felony, the species whereof is plainly and fully set forth in the warrant of commitment in vacation time, and out of term, it shall and may be lawful to and for the person so committed or detained, or any one on his or her behalf, to appeal or complain to any Judge of the Supreme Court, or to the President of the Court of Common Pleas for the county within which the person is so committed or detained ; and such Judge or Justice, upon a view of the copy or copies of the warrant or warrants of commitment or detainer, or otherwise, upon oath or affirmation legally made, that such copy or copies were denied to be given by the person or persons in whose custody the prisoner is detained, is hereby authorized and required, upon request made in writing by such prisoner, or any person on his or her behalf, attested and subscribed by two witnesses, who were present at the delivery of the same, to award and grant a *habeas corpus* under the seal of the Court whereof he shall then be a Judge or Justice, to be directed to the person or persons in whose custody the prisoner is detained, returnable immediately before the said Judge or Justice; and to the intent, and that no officer, sheriff, jailor, keeper or other person, to whom such writ shall be directed, may pretend ignorance of the import thereof, every such writ shall be made in this manner : 'By Act of Assembly, one thousand seven hundred and eighty-five,' and shall be signed by the Judge or Justice who awards the same."

This section, though referred to for the words of exception which the Chief Justice has quoted and I have read to you from his opinion, does not contain them.

The precise words of the quotation are in the second section, which is as follows :—

"2. And whenever the said writ shall by any person be served upon the officer, sheriff, jailor, keeper, or other person whatsoever to whom the same shall be directed, by being brought to him, or by being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he, or some of his under officers or deputies shall, within three days after the service thereof, as aforesaid, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the Judge or Justice who awarded the writ, and thereon endorsed, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying him back, if he shall be remanded, and not to escape by the way, make return of such writ, and bring, or cause to be brought, the body of the prisoner unto or before the Judge or Justice before whom the said writ is made returnable, and, in case of his absence, before any other of the Judges or Justices aforesaid, and shall then likewise specifically and fully certify the true cause or causes of the commitment and detainer of the said prisoner, and when he was committed, unless the commitment be in any place beyond or twenty miles from the place where such Judge or Justice shall be residing; and if beyond the distance of twenty miles and not above one hundred

miles, then within ten days, and if beyond the distance of one hundred miles, then within twenty days. And thereupon, the Judge or Justice before whom the prisoner shall be so brought shall, within two days, discharge the prisoner from imprisonment, taking his or her recognizance, with one or more surety or sureties, in any sum, according to his discretion, having regard to the circumstances of the prisoner and the nature of the offence, for his or her appearance at the next Court of Oyer and Terminer, general jail delivery, or general quarter sessions, of or for the county, city or place where the offence was committed, or in such other Court where it may be properly cognizable, as the case shall require, and then shall certify the said writ, with the return thereof, and the said recognizances, into the Court where such appearance is to be made, unless it shall appear to the said Judge or Justice that the party so committed is *detained upon legal process, order, or warrant for such matter or offences for which, by the law, the said prisoner is not bailable;* and that the said Judge or Justice may, according to the intent and meaning of this act, be enabled, by investigating the truth of the circumstances of the case, to determine whether, according to law, the said prisoner ought to be bailed, remanded, or discharged, the return may, before or after it is filed, by leave of the said Judge or Justice, be amended, and also suggestions made against it, so that, thereby, material facts may be ascertained."

The perusal of the two sections makes it plain; the first relates exclusively to the issue of the writ; the second exclusively to the service, proceedings and hearing; the pith of it all is that the second section requires on hearing that the prisoner, though a case may be presented, requiring that he shall be held for trial, shall be admitted to bail and so held for trial, unless the charge be not bailable. If the prisoner be held, without sufficient cause, illegally, the Judge must discharge him; if cause be shown, the Judge must hold him for trial in prison or by bail.

The second section does not come into operation until the first has been complied with, and the writ allowed and issued; then the requirements of the second section begin.

But the writ has gone forth and penetrated the doors of the prison.

What we ask for here, the allowance and issue of the writ, must be granted, before the words or directions of the second section can be invoked either for the benefit or to the prejudice of the prisoner or relator.

Is not the application of this quotation by the Chief Justice a plain mistake?

Now, I do ask in candor, does it mean that this is a case excepted by the *habeas corpus* act? It is only a case excepted out of the duty imposed on the Judge in the second section, who is directed to take bail only in such cases as are bailable. It is easily understood in that connection. When the opinion first met my eye I confess that it almost confounded me, for it was not in accordance with any previous opinion

that I had formed. I think that my view of the matter cannot be wrong, and if it be not wrong it is an answer, and a full one, to the objection that an offence not bailable is excepted out of the injunction to the Court, in the first section, to issue the writ.

In the same opinion the case of *ex parte* Lawrence, 5 Binn. 304, is cited. Reference is also made to this case in the petition of the relator. Our version of the case is, that it does not conflict at all with the right of the prisoner to the writ. It only decides that the hearing of the case before a Court of competent jurisdiction, of the prisoner's own selection, after the granting of the writ, satisfies the demand of the statute. In this case we have had no writ; we have not been heard; the requirements of the statute in our behalf have not been satisfied. The case of *ex parte* Lawrence is not applicable farther than, as we think, to enforce the position we take, that the act and its injunctions are imperative upon the Court, and require the allowance of the writ to the relator.

We next meet, in the opinion of the Chief Justice, a reference to the case of Brass Crossby, 3 Wilson, 188. What was that case? It was a commitment for contempt of the privileges of the House of Commons; neither the Judges nor the people of that day ventured to question the jurisdiction of the House, either in matters of contempt or matters of privilege, in violation of which contempts were committed. It is, therefore, an authority not applicable to the present case, as, I think, your honors will see. We allege that there is no jurisdiction to authorize the writ asked for by Col. Wheeler. In every case of refusal of the writ cited by the Chief Justice, and especially in the cases of contempt cited by him, indeed, in every case that has come under my eye, there has been, without exception, an admission that the subject matter before the tribunal, Court or Judge, in connection with which the commitment was made, was *within its jurisdiction.* That is our position. Besides, Brass Crossby's case was suited to other times rather than the present.

In the case of *ex parte* Kearney, cited by the Chief Justice, (7 Wheaton, 38) the committing Court had undoubted jurisdiction of the subject matter, and so in Nugent's case, (1 Am. Law Reg., p. 111,) the jurisdiction of the Senate was not doubted but alleged by Judge Cranch. The honorable Judge of the District Court of the United States, while holding a session of the Court, if interrupted in the course of the proceedings by some flagrant violation of decency and propriety, may commit for contempt, whether the guilty person be party, spectator, or casual visitor in the Court. The commitment may be general in its terms. I would not be here to argue such a case and say that there was a power of revision here. That, I admit, is a case of summary conviction with

in the legitimate powers of any Court, and it matters not what might be the business before the Court at the moment, so that the Court was in session, and the act was an invasion of its rights and dignity. But it would be a vastly different case if a Judge of a Federal Court should commit for contempt, in open violation of the act of Congress, prohibiting jurisdiction of contempts for matters done out of Court. If any Federal Judge should undertake to bring the publisher of a newspaper before him for having refused to comply with an order of the Court in reference to business before the Court, or for having used disrespectful language concerning the Court, and if, on the commitment, it should appear that he was so committed for such contempt, there very clearly, any State Court of general jurisdiction would have a right to interfere and be bound to grant relief. And why? Because by the act of Congress itself, all jurisdiction of such offences and such contempts is taken away from the Federal Courts, although they have limited jurisdiction in commitments for contempt.

The whole stress and weight of the authorities cited by his Honor, the Chief Justice, will be removed if we can establish that Col. Wheeler's application for the habeas corpus is a case without the jurisdiction of the Federal Court; that once established, the want of such jurisdiction makes the proceedings *coram non judice*, renders them a nullity and utterly void, and of no effect in law. We can satisfy your honors, by precedent and authority, that in cases of contempt there have been instances of interference by Courts under similar circumstances, and of writs granted for the relief of the persons in jail, under which the relators have been relieved.

Now, may it please your Honors, had the Judge of the District Court of the United States jurisdiction in this case? The Federal Courts are not *inferior*, but they are *limited* in their jurisdiction. Their jurisdiction is obtained from the Constitution and from the acts of Congress passed in pursuance thereof. There are three classes of cases into which I have looked in vain to find anything that can sustain the jurisdiction exercised in this case. The first is the jurisdiction as to that class of cases arising between citizens of different States. This application for the writ of *habeas corpus* could not, by any forced construction, be within it. The writ of *habeas corpus* is not a proceeding *inter partes*. It is a proceeding *ex parte* and *in personam*, and that provision, as far as litigation is concerned, is intended to be applicable to proceedings *inter partes*, where the parties are citizens of different States. It would be a monstrous construction to say that, because the relator, Col. Wheeler, was a citizen of North Carolina, and the respondent was a

citizen of the State of Pennsylvania, that this difference of citizenship should give jurisdiction to the United States Court. If that could be pretended for a moment, it would give jurisdiction in all criminal matters, in every case in which an informer or relator might not happen to be a citizen of the State in which the proceedings are instituted. There can be no reason, there can be no authority, there can be no case shown, which will bring an *ex parte* application or a petition for a *habeas corpus* within the law on this head

The next class of cases is that of fugitives from justice. Is there any pretence that this is such a case? We have to look into these matters before your honors that the interests of our client may not be disregarded, for the learned Judge who delivered the opinion of the U. S. District Court has not deigned to tell us where, in the written or unwritten law, he finds authority for the assumption of jurisdiction by him. We must speculate upon it, in order that we may not be charged with neglect of duty towards our client. Such authority certainly cannot be found. Can it be said that Jane, the alleged slave, had escaped or was a fugitive from justice? No. Can there be any law of North Carolina or Virginia by which a desire, if she entertained one, a dream, if she ever had one, or a wish or intention to be free, if she ever expressed one, can be construed into a crime against the laws of North Carolina or Virginia, so that she could be pursued here, or any proceedings be instituted here which could be styled a *habeas corpus cum causa*, and sustained under the clause applicable to fugitives from justice? I cannot imagine such a case coming within that class. If the Federal judiciary, or rather our brethren in any of our sister States, by any such forced construction, should ever attempt to raise questions of that kind upon such feeble and frail grounds, I think that they will do much —and they have done something in this case—to weaken if not to snap asunder, the bonds which have united us in this powerful sisterhood of States.

Judge LOWRIE.—I believe our neighbors immediately south of us did pass an act of assembly declaring it criminal for slaves to escape across the line into this State. I think they have repealed it, however.

Mr. GILPIN.—I know that there have been enormities—I use the term in no offensive sense—enormities in the eye of the law, committed in that way; and I have been trying to find what one could be suggested, for the purpose of bringing this within the jurisdiction of the United States Court. I hope the day will never come when it will be attempted to stretch the authority of the law for that purpose.

The next class is that of fugitives from service or labor. Does this

case come within that class? There is no allegation here that this party came otherwise than with the voluntary consent of the alleged master, from the State where they belonged to the State of Pennsylvania. There are two cases which I think proper to cite to your honors in this connection. One is a case decided by a Southern Judge, an upright and learned man, Judge Washington. The case is *ex parte* Simmon's in 4 Washington Circuit Court Reports, 396. In that case, before the repeal of any portion of the proviso or exemption of the abolition act of 1780, a citizen of South Carolina came voluntarily with his slave into Pennsylvania, and resided in Philadelphia. Wishing to return to South Carolina, he appeared before the Judge, (whether with or without his slave, the case does not say, the alleged slave being evidently within his power and control,) and asked from Judge Washington a certificate of removal. But Judge Washington said, no; that case is not within the act of 1793, and I cannot help you.

This is the syllabus :—

"The Act of Congress respecting fugitives owing labor does not apply to slaves brought by their masters from one State to another, who afterwards escape or refuse to return."

And these are the words of the Judge :—

"The slave in this case having been voluntarily brought by the master into this State, I have no cognizance of the case so far as respects this application, and the master must abide by the laws of the State so far as they may affect his rights. If the man claimed as a slave be not entitled to his freedom under the laws of this State, the master must pursue such remedy for his recovery as the laws of the State have provided for him."

Judge BLACK. Have you a copy of the record in the case now before us?

Mr. GILPIN. It is printed in the paper-book, and your honors have it all, and all the proceedings *except that portion which is omitted in the certified copy procured from the office,* and to which we can only allude in our petition. *The traverse of the return to the habeas corpus does not appear upon the record.* We have to take the record as it is given to us, as importing verity, it being signed by the clerk and certified by the Judge. If it be within the course of their procedure to traverse a return, not by the verdict of a jury, but by the opinion of the Court on parol proofs, and not to certify the traverse on the exemplification at all, it is an irregularity that has never before crept into the most irregular proceedings of any Court of Pennsylvania.

I confess that the hearing before Judge Kane was a case of unusual hardship upon the professional gentlemen engaged, hardship of a kind which I never before experienced in my professional life. I never, when

called into court, upon the spur of the moment, without an instant for consideration, was met with a refusal of time to consider, as we were there met with the refusal of the learned Judge, who, after hearing the argument on one side, and after the counsel on the other side had declined to speak on account of a want of time for preparation, said to the counsel to whom he denied time, that he must take a week to prepare his opinion.

I have given your honors the syllabus of *ex parte* Simmons, and the words of Judge Washington's opinion. Here is high authority. Here is—not using the term in an invidious or obnoxious sense—Southern authority, though the opinion was delivered, it is true, within the borders of a free State.

I will refer to another case to show that this matter has been before the Courts of Pennsylvania, and that they have extended to the utmost the free and liberal construction of the act of 1793, and of the provision in the Constitution for the relief and benefit of the master. The case to which I allude is, Butler vs. Delaplaine, 7 S. & R., 385. This was a case of *homine replegiando;* the alleged slave had been brought into this State, not by or with the consent of the owner, but by a bailee for hire; in other words, the owner resided in Maryland, the slave was hired out, and, without the knowledge or consent of the master, brought into Pennsylvania. When in Pennsylvania the slave claimed his or her freedom, and the writ of *homine replegiando* was used to try the question. Judge Duncan, with the spirit that has always prevailed in our judiciary to do full and ample justice to our Southern brethren, said:—

"The slave who is removed into this State without the consent or connivance of the master, may be considered as a slave absenting himself, absconding, or clandestinely carried away under the 11th section of the Pennsylvania Abolition Act of 1st March, 1780."

And: "Such removal under the 4th art. 2d section of the Constitution of the United States, would be an escaping into another State."

"And the slave coming into the State in any other way than by the consent of the owner, whether he comes in as a fugitive or run-away, or is brought in by those who have no authority so to do, cannot be discharged under any law of this State, but must be delivered up on claim of the party to whom his service or labor may be due."

But in this case the Judge admits, in the course of his opinion, that if the master had connived at, or had consented in any way to the bringing into this State of the alleged slave, the law would have been entirely different.

There is another case to which I wish to call attention in this connec-

tion, as it throws some light upon the question before us. It is the case of Choteau vs. Marguerite, 12 Peters' Reports, page 361. This was a contest for freedom, under the laws of Missouri, in the State Court, I believe. It was a writ of error to the Supreme Court of the United States. The question of freedom or slavery was involved in the decision of the Court below: an application was made to dismiss the writ of error to the Supreme Court of the United States, and it was dismissed. And why? For want of jurisdiction. And why? Because the case was not within the appellate jurisdiction of the Supreme Court of the United States, given in the Judiciary act, no law of the United States or treaty being in question. Jurisdiction is not to be inferred or presumed because a question of freedom or slavery is involved, though exclusively cognizable in the case of fugitives from service or labor, by the United States Courts and Judges, or because such question was raised and decided in a State Court, the person not being a fugitive.

I cannot, therefore, see that there is anything in either of these three classes of cases, from which it can be inferred that jurisdiction was given to the District Court of the United States in the matter now before you. I do not want to dwell long upon the Judiciary act of 1789; mainly upon it, all the Courts of the United States depend for their powers. The 9th section of the act is the one upon which the District Court of the United States chiefly depends for its powers. There are other sections giving it jurisdiction, in other matters foreign to this question. The 14th section of the act prescribes that the Courts of the United States shall have power to issue the writ of *habeas corpus* in certain cases. The right to issue the writ of *habeas corpus*, given in the first part of the fourteenth section, is in aid of the jurisdiction of the Court, not in favor of liberty. The fourteenth section has two divisions. The former being a grant of power in aid of proceedings within the jurisdiction theretofore conferred; the latter in favor of the liberty of the citizen. Unless, therefore, something can be found in the ninth section to sustain the jurisdiction of the Federal Court, the fourteenth section, and the power given under it, is utterly at fault in any support that it can give. I need not allude to the latter part of the fourteenth section, which gives power to inquire into commitments, because that is expressly limited to commitments and bindings over by and to the *Federal* Court and the power in cases of commitment by the *State* Court is expressly excluded. This view has been sustained by case after case, the most prominent of which is Dorr's case, with which your honors are all familiar.

I will not dwell longer upon this matter, for I cannot find, as I be-

fore said, any precedent upon which the jurisdiction can be sustained; the cases before Judges Grier and Kane in the Federal Court arising out of certain occurrences in Luzerne county, and their doctrines, have been repudiated by this Court, and do not seem to me to apply.

The position we first take, and upon which we hope to obtain this writ and the discharge of the prisoner, is the entire want of jurisdiction in the Federal Court upon the petition as presented by Col. John H. Wheeler, of North Carolina. The next question that comes up is, if the court had no jurisdiction, are not its proceedings *coram non judice, nullities, utterly null and void?* I know that there is a distinction between Courts of inferior and Courts of limited jurisdiction in regard to the character of their proceedings and how they are to be treated; but there are cases, and very pointed ones, of very good authority, in which the proceedings of Courts not inferior, but of record, and of limited jurisdiction, have been held and treated as nullities for want of jurisdiction of the subject-matter. Let me put a case, may it please your honors. We have had with us a very estimable gentleman, who presides over a Court of Philadelphia City and County, of limited jurisdiction, with power to entertain civil, but not criminal pleas. We might imagine a case—but certainly not under the administration of the President Judge or either of his associates, in which, by an usurpation and assumption of power, that Court of limited jurisdiction, but not an *inferior* Court—might undertake by indictment, by trial by jury, or by any other means which might suit the capricious fancy of the man at its head to oppress an individual, to try him for larceny. Such a case might result in a conviction, and the accused might be, with a certificate to that effect, lodged with the warden at the penitentiary. A commitment being thus issued by the District Court of the City and County of Philadelphia, a Court without criminal jurisdiction, not an *inferior* Court, but of *limited* jurisdiction, will any one say to me, that you would not interfere? it *cannot* be. There is *something* in the liberty and in the protection of the liberty of the citizen, there is *something* in the powers of Courts of concurrent and co-ordinate jurisdiction, and *something* in the power of the Supreme Court of the land that will justify interference in a case like that. What difference is there between the case which I have just supposed and the case decided by he District Court of the United States? The District Court of the United States had no jurisdiction, but acted under an assumed and usurped power; and with all deference to the learned federal judge who pronounced the opinion, I must say, that I do not think my supposed case would be a much more flagrant assumption of power and ju-

risdiction than the real one is, in which Passmore Williamson is the the respondent and victim, and the Hon. Judge of the District Court of the United States for the Eastern District of Pennsylvania, the actor.

I will now refer to several cases which I have upon my notes, upon this point of proceedings *coram non judice.* Kemp vs. Kennedy, 1 Peters' Circuit Court Reports, page 36; also to be found reported in 5 Cranch, 172. The proceedings of any tribunal not having jurisdiction of the subject matter which it professes to decide are void. Wickes vs. Caulk, 5 Harr. & J., 42. Griffith v. Frazier, 8th Cranch, 9 Den vs. Harnden, Peirce, 55.

The next case to which I will refer, is in Wharton's Digest, 1850, 1st volume, page 321, s. 282. The Com. vs. Smith, Esq. Sup. Ct. Penn. Oct. 1809, Pamphlet, p. 47–8. A State Court has a right to discharge a prisoner, committed under process from a Federal Court, if it clearly appears that the Federal Court had no jurisdiction of the case."

The next is Olmstead's case.

Judge BLACK.—In what year was that case decided?

Mr. GILPIN.—Com. vs. Smith, was in 1809, the year in which I was born; a pretty old case, but if it has kept as well as I have, I hope it will be good law yet.

Chief Justice LEWIS.—That principle does not need authority. It is certainly law.

Mr. GILPIN.—Am I to understand his honor, the Chief Justice, to say that if the proceedings before the District Court of the United States were not within its jurisdiction that they are *coram non judice, null and void?* for it is a great step in our argument if we can reach that point.

Chief Justice LEWIS.—I concede the very words of the decision you have just cited to be undoubted law.

Jubge BLACK.—I suppose the decision settles that as far as it goes.

Mr. MEREDITH.—This is precisely our point.

Chief Justice LEWIS.—And you should have the benefit of it, if it *clearly* appears that the District Court of the United States had not jurisdiction. In such case I think that the State Court would have power to discharge; in fact, I have no doubt of it, if it *clearly* appears upon the face of the record.

Mr. GILPIN.—Then it will be necessary for me to fall back upon the record, perhaps, but I should like to give the authorities upon that point. Olmstead's case is cited in Wharton's Digest, and also in Bright-

ley's Reports, page 9. It was there decided that the State Court has a right to discharge a prisoner under process of a Federal Court, when it clearly appears that the Federal Court has no jurisdiction. Brightley has gathered up cases not before published in any book of reports.

In the case of Holden vs. Smith, 14 Adolphus & Ellis, N. S. 841, the Court held that in the absence of jurisdiction the proceedings were to be treated as a nullity.

Judge LOWRIE.—We frequently go a little further than that in relation to soldiers. We send the writ of *habeas corpus* to the United States officer, directing him to relieve them from custody and discharge them.

Mr. MEREDITH.—Nobody ever doubted your jurisdiction, may it please your honor.

Mr. GILPIN.—I have just mentioned the case of Holden vs. Smith, which I want to give in brief, to be found in 14 Adolphus & Ellis, new series, page 841. It is remarkable in some of its features. It was a case of commitment for contempt, not by an inferior Court, but by a Court of record. Proceedings at law for damages were instituted against the judge of the Court committing, by the party so committed, and the Court sustained the action, deciding that the proceedings of the Court below, in the absence of jurisdiction of the subject matter, were a nullity, and that the judge was responsible.

We take Col. Wheeler's petition as presented to the Court, we give the judge the full benefit of the facts set forth upon the face of the record, and we say that there was no jurisdiction.

There is another case to which I would direct attention, supposing jurisdiction to exist, to show the arbitrary and oppressive nature of these proceedings. I have also a number of other cases under the head of *habeas corpus, the return* and *the traverse of the return.* But I want particularly to allude to one case, cited by his honor, the Chief Justice of this Court, in the case of Thomas vs. Crosson, and relied upon as authority on one point, which is fully and substantially authority on another point, establishing that the whole proceedings upon the traverse of the return before the Federal Judge were wilfully wrong and unjust to the defendant.

The case of Renney vs. Mayfield, in 4 Hayw. 166, cited by the Chief Justice, decides that the return being full and complete, and not evasive, was not traversable; but the case decided more than that. The *habeas corpus* was granted in favor of liberty to produce the body of a person who was alleged, by the respondent in his return, to be a slave. The respondent made return that he held the person, who was thus in his

custody, as a slave. The relator, or the friends of the relator, offered a bill of exceptions to the return, in the way of traverse, alleging that it was untrue, and that the party was free. The judges not only decided that the return could not be traversed, but also, that in those proceedings by habeas corpus the question of freedom could not be decided at all. If in a slave State the question of freedom cannot be tested under a writ of *habeas corpus*, and if this be good law in a slave State, where a bill of exceptions is not allowed to traverse the return in favor of freedom, shall it be said that in a free State where a free citizen, a respondent in a habeas corpus, makes a full, complete and unevasive return, that the party who asks to enforce the claim of property—not to relieve a party from unjust imprisonment—shall be permitted to traverse the return, when the result of the traverse is presumptions and conclusions by the Judge, which end in a commitment for contempt without bail or mainprize? Let us have equal law all around. This ought to be good law for us as well as for them. I know his honor, the Chief Justice, so viewed it, or he would not have cited and relied on it in Thomas vs. Crosson.

I wish, before taking my seat, to call the attention of the Court to the case of Thomas vs. Crosson, to the very contradictory results which are to follow, and the very absurd relations in which we are to be placed hereafter, if the writ of *habeas corpus* be now refused. In that case (Thomas vs. Crosson,) on motion for attachment against the Sheriff, he not bringing in the body, he was held to be in contempt, because he had not brought in the body. What was the justification set up by the Sheriff? That the defendant had been discharged on habeas corpus by the District Court of the United States. It is alleged that he was not justified by that discharge. Be it so. That was the law in Thomas vs. Crosson. The whole proceedings before the Federal Court were regarded and treated as nullities. Why? Because the Federal Court had no jurisdiction. It was so alleged and ably argued, by counsel, before the Chief Justice and rightly decided by his honor, the Chief Justice and his associates. It is said that in this case we cannot avail ourselves of the want of jurisdiction, because the question was not raised in the District Court. Look at the arguments before Judges Grier and Kane, and the proceedings in Crosson's case, as reported in Wallace, Jr., and the American Law Journal. No question of jurisdiction was raised, so far as appears by the report of the several cases.

If, in Thomas vs. Crosson, the proceedings were held nullities, why should not the proceedings in Williamson's case, before Judge Kane, be held null and void?

If null and void when Crosson was discharged, the order being *coram non judice*, why not null and void when Williamson is incarcerated by an order and commitment *coram non judice?*

Suppose to-morrow this alleged slave (Jane) is found walking in the streets or highways of the Commonwealth of Pennsylvania, and she is abused, as was alleged in the case of Thomas, an affidavit is made under like circumstances, as in the case of Thomas vs. Crosson, and process, a *capias ad respondendum* is allowed by one of the Judges of this Court, upon which the officer is arrested, as in Thomas vs. Crosson. The District Court of the United States issues a *habeas corpus* to the Sheriff, who has arrested on the *capias ad respondendum*, and the Sheriff takes his instructions from the opinion in Thomas vs. Crosson. He appears with his prisoner before the honorable Judge Kane, and says: "Sir, I have been instructed by the Supreme Court of Pennsylvania not to discharge the prisoner under such circumstances, and I have him in custody under the writ." His Honor says: "I do not care for the writ. Mr. Marshal, take the Sheriff below, as for contempt in not obeying our order, and let the prisoner go free." The Sheriff is then required to answer a rule in this Court because he has not produced the body which he had under arrest; and when he comes to answer this rule for an attachment, he says in one breath, by his counsel, for he is below for contempt, that the prisoner was discharged by the interference of the District Court of the United States, on *habeas corpus*, and in the next breath he presents to your honors a petition for a *habeas corpus* to relieve himself from prison; and you tell him that you cannot relieve him, the commitment being for contempt, and not bailable, and not within the *habeas corpus act.* It is true that he has acted under the instructions and the authority of the case of Thomas vs. Crosson. He did right to say to the honorable Judge of the Federal Court, "you have no jurisdiction; I will not discharge the prisoner." He did right in submitting to commitment for contempt of Court. You sustain him in it, in Thomas vs. Crosson, and yet will not relieve him on his petition for *habeas corpus.* This is a case which may at any time come to pass.

Chief Justice LEWIS—Why will not the Court relieve him?

Mr. GILPIN—Unless Passmore Williamson is relieved, I do not see how the Court could relieve him.

Chief Justice LEWIS—The difference between the case of Thomas vs. Crosson and the one now before us, is that Crosson and others were in arrest under the custody of a State officer, in pursuance of a process issued by a sovereign State, and that the act of 1789, giving jurisdiction to the United States Courts to issue writs of *habeas corpus*, expressly

prohibits them from relieving persons in prison under State process. The act, therefore, cited here did not give them any jurisdiction in that case; it appearing, through the whole record, that the District Court had undertaken to nullify the process of the State, and to relieve a man from imprisonment under that process, in defiance of the act of Congress giving jurisdiction. Then they put forward the allegation that they claimed jurisdiction under the force bill of 1833, which allowed them to relieve a United States officer, who was imprisoned by the State for any act done under, and in pursuance of an act of Congress, and the decision in that case was that it did not appear on the record that Crosson was imprisoned for anything done under any act of Congress, but for an outrage committed against all law.

Mr. GILPIN—I should be very glad if I could see the distinction drawn by your honor; but it seems to me that the circumstances in the two cases necessarily involve the same consequences.

I wish to cite two other cases before I close my argument. One is a decision of Judge Betts, and the other of Judge McLean. The decision of Judge Betts, in the case of Barry vs. Mercein, is referred to in 5th Howard, 103, S. C.

In that case the question to be adjudicated was the claim of two contending parties to the guardianship and custody of a child.

Judge Betts refused the writ of *habeas corpus* for want of jurisdiction, and the Supreme Court, in 5th Howard, decided they had no appellate jurisdiction.

The other, and a most important case, is reported in a newspaper; it was decided by Judge McLean, of the Supreme Court of the United States, who interfered by *habeas corpus*, where a party was in custody for contempt under an order of a State Judge, and discharged the party so committed for contempt. All the authorities which we have previously adduced to your honors, are those from which this right to hear and determine on *habeas corpus* is to be deduced and inferred. We now come to *the* authority, a case exactly in point. If the right of the citizen of Pennsylvania is invaded, as in this case, and his body incarcerated, the State Court will not hesitate certainly to follow in the footsteps of the Federal Court, where it proceeds for the purpose of liberating the prisoner. This case of *ex parte* Robinson, is to be found in the Cincinnati Gazette, of Thursday morning April 5, 1855, headed, "An important decision of Judge McLean in the case of the U. S. Marshal," &c.

Proceedings were begun before a United States Commissioner under the fugitive slave act, and while they were pending the State judge issued a *habeas corpus*, which the marshal refused to obey, for which

refusal he was attached forthwith and committed for contempt by the State judge. An affidavit and petition for *habeas corpus* were presented by him to Judge McLean of the Supreme Court of the United States. The *habeas corpus* was issued, and the Judge decided that the State Court had, under the circumstances, no jurisdiction, treated the whole proceeding as a nullity, and interfering, discharged the prisoner, which is all that we ask your honors to do here.

May it please your honors, apologizing for the time which I have already occupied in the discussion of this case, I am not disposed to dwell any longer upon it, although I leave it without a proper arrangement of the authorities. I desire to make way for a gentleman who will very ably and fully supply all my omissions and neglects.

The Hon. WM. M. MEREDITH suceeeded Mr. Gilpin in the following argument in favor of the prayer of the petitioner:

Mr. MEREDITH.—The petition shows that Passmore Williamson stands committed and detained for a criminal, or supposed criminal matter, *other than* treason or felony, and in due form he prays for the writ of *habeas corpus*. The *habeas corpus* act of 1785 imperatively requires that the writ shall be issued upon such petition, and imposes a penalty upon any judge who shall refuse or neglect to award the same. Instead of awarding the writ upon the presentation of the petition and the usual motion, the Court has directed that a preliminary *ex parte* argument shall be submitted on the questions which would arise upon the return of the writ if it had been awarded.

With all the respect which I habitually pay to all tribunals of justice, and which for every reason, public and personal, I most habitually pay to this, I enter my protest, as a citizen of Pennsylvania, against the establishment of such a precedent. We find none such, that I am aware of, heretofore reported in this State. In one case, where a *second* writ of *habeas corpus* was applied for on the same commitment, Chief Justice Tilghman held the statutory right to be exhausted by the issuing of the first writ and hearing thereon, and that the issuing of a second writ was therefore discretionary, and he refused to issue the second writ in that case, because, as he stated, it was to be heard upon the same evidence that had been given on the first writ, before a judge of the party's own selection. But by whatever authority, whether United States or other, and whether judicial or executive, a citizen of Pennsylvania has been detained in custody within the State for a criminal or supposed criminal matter, (unless for treason or felony) the Supreme Court has never hitherto failed, in the discharge of the duty imposed upon it,

to award a *habeas corpus* to inquire into the cause of his commitment.

Olmsted's case and *Lockington's case*, both decided before Chief Justice Tilghman, and in fact every case of the kind that has hitherto been presented to the Court, or to a judge in vacation, is clear to this point.

I protest, therefore, against the course pursued upon this occasion:

First, Because it is directly contrary to the express requirements of the great statute of *habeas corpus*—the act of 1785 It is, in fact, *pro tanto* a suspending of a law—the power of suspending which the twelfth section of the Bill of Rights provides shall not be exercised unless by the Legislature or its authority—and further, it is a suspending of the privilege of the writ of *habeas corpus*, which the fourteenth section provides shall not be suspended (even by the Legislature) unless when, in cases of rebellion or invasion, public safety may require it.

Secondly, Because by thecourse pursued, the Petitioner, now incarcerated in the city of Philadelphia, is deprived of the right which the common law gave him, (and which the spirit or letter of every constitution in this country has assured to him,) of being present at the discussion of the question of his personal liberty, and of participating in that discussion at his option.

Thirdly, Because the counsel of the Petitioner are here required to argue *ex parte* questions, on which, before their decision, the respondent has the right to be heard on his return, and are thus necessarily trammelled and embarrassed at every step.

For these reasons, and I will not further dwell upon them, I have felt myself bound to make the protest which I have respectfully submitted to the Court, and having done so, will now proceed, under the express direction of the Court, to offer some considerations upon the question of Passmore Williamson's right to a discharge by this Court from his present imprisonment.

It appears from the petition and papers annexed, that the petitioner is in custody under process of the District Court of the United States as for a contempt of that Court, and I am to establish three principal positions

First, That it is the right and duty of this Court to discharge him, if the District Court of the United States has exceeded its jurisdiction in committing him.

Second, That the proceedings in that Court, which resulted in his commitment, were wholly and absolutely *coram non judice*, and were therefore null and void.

Third, That the fact that the commitment is as for a contempt, does

not preclude this Court from inquiring into the jurisdiction upon which such commitment professes to be founded.

First, The Supreme Court of the Commonwealth of Pennsylvania is a Court, not of limited, but general jurisdiction, and established by a government, not of enumerated, but of general powers. Those who deny your jurisdiction must show by what statute or by what constitutional provision it has been taken from you, and if such cannot be shown, you are bound to inquire into the legality of the imprisonment of any citizen of Pennsylvania, under whatever pretended authority. I speak as a citizen of Pennsylvania and as a citizen of the United States, sincerely attached to the Constitutions of both, when I say that I believe neither can be ultimately preserved upon any other principle or by any other course than the exercise, whenever the occasion shall arise, of the just authority of the State Courts which is now invoked.

In *Olmsted's case*, (*Brightley's Reports*, 9,) in which Chief Justice Tilghman awarded a writ of *habeas corpus* to bring up a prisoner in custody under an attachment for contempt issued from the District Court of the U. S., the counsel of the respondent on the hearing upon the return brought forward directly the question whether the Chief Justice had a right to discharge the prisoner, even if he should be clearly of opinion that the District Court had no jurisdiction. That learned, wise, and excellent judge said:

"I am aware of the magnitude of this question, and have given it the consideration it deserves. My opinion is, with great deference to those who may entertain different sentiments, that in the case supposed, I should have a right, and it would be my duty, to discharge the prisoner. This right flows from the nature of our federal constitution, which leaves to the several States absolute supremacy in all cases in which it is not yielded to the United States. This sufficiently appears from the general scope and spirit of the instrument. The United States have no power, legislative or judicial, except what is derived from the Constitution. WHEN THESE POWERS ARE CLEARLY EXCEEDED, THE INDEPENDENCE OF THE STATES, AND THE PEACE OF THE UNION, DEMAND THAT THE STATE COURTS SHOULD, IN CASES BROUGHT PROPERLY BEFORE THEM, GIVE REDRESS. THERE IS NO LAW WHICH FORBIDS IT; THEIR OATH OF OFFICE EXACTS IT, AND IF THEY DO NOT, WHAT COURSE IS TO BE TAKEN? WE MUST BE REDUCED TO THE MISERABLE EXTREMITY OF OPPOSING FORCE TO FORCE, AND OF ARRAYING CITIZEN AGAINST CITIZEN, FOR IT IS IN VAIN TO EXPECT THAT THE STATES WILL SUBMIT TO MANIFEST AND FLAGRANT USURPATIONS OF POWER BY THE UNITED STATES, IF (WHICH GOD FORBID) THEY SHOULD EVER ATTEMPT THEM."

The Courts of the United States have a similar authority in any case in which the State Courts may trench upon the rightful jurisdiction of the federal courts or authorities, and the only mode of securing permanently the peace, union, and constitutions of the country, is by the calm

and firm performance of their respective duties in this regard, by the State and Federal Courts, as occasions shall arise. If it be said that this may produce a *dead lock* in case those courts directly differ, there being no common arbiter to decide between them, I answer that the common arbiters are immediately the representatives of the States and of the people of the respective States, and, ultimately, the good sense of the people themselves; and, being a republican myself, and believing the continuance of a republican government to be practicable, I do not doubt the sufficiency of such arbitrament. If the People were not competent to feel where the right is, upon the broad and great principles of our Constitutions, State and Federal, and of the essential divisions of powers between them, we should have, indeed, reason to despair of the republic.

Secondly, I am to establish that the proceedings in the District Court of the United States, of which the Petitioner complains, were absolutely *coram non judice*, and therefore null and void.

I put the case upon this ground distinctly. I am to show this clearly.

The record of that Court shows that a *habeas corpus* was issued on the petition of Mr. Wheeler, directed to Mr. Williamson, for the bodies of certain persons alleged by the Petitioner to be owned by him, and held to service or labor by the laws of the State of Virginia, and to be detained from his possession by the said Passmore Williamson. The record does not allege that they were *fugitives* from service, or had *escaped* from the State of Virginia or any other State to the State of Pennsylvania, and the parole evidence taken in the case, as well as the opinion of the learned Judge of the District Court, show that in fact they had not so escaped, but had been voluntarily brought by Mr. Wheeler, their owner, into the State of Pennsylvania. The learned Judge, in his opinion, speaks of their being upon the navigable waters of the Delaware. In point of fact, as shown clearly by the evidence, they had been brought by Mr. Wheeler, by land, through a portion of the State of Pennsylvania, and at the time of their alleged abduction, were on board a steamboat lying at a wharf on the river Delaware. The present petitioner states these facts in his petition, and is ready to prove them, on a traverse, according to the Act of Assembly, if they should be denied in the return, or if they should be otherwise questioned.

The record itself, however, does *not* show that they were "fugitives from service or labor" within the provisions of the Constitution of the United States, and therefore they are to be taken *not* to have been so.

I. It is scarcely necessary to show by authority that a slave voluntarily

brought by his owner into the State of Pennsylvania is not a *fugitive* who has *escaped* from another State within the provisions of the Constitution. But without dwelling on other cases, I will remind the Court of the cases of Simmons, (4 Washington Circuit Court Reports, 390.) and Butler vs. Hopper, (1 Washington Circuit Court Reports, 499;) which are express to this point.

II. Not being fugitives within the provisions of the Constitution of the United States, these alleged slaves, as well as their master, while within this State, were subject to the laws of this Commonwealth. Judge Washington says, in *Simmons' case*, which was an application for a warrant under the act of 1793:

"THE SLAVE IN THIS CASE HAVING BEEN VOLUNTARILY BROUGHT BY HIS MASTER INTO THIS STATE, I HAVE NO COGNIZANCE OF THE CASE, SO FAR AS RESPECTS THIS APPLICATION, AND THE MASTER MUST ABIDE BY THE LAWS OF THIS STATE SO FAR AS THEY MAY AFFECT HIS RIGHTS. IF THE MAN CLAIMED AS A SLAVE BE NOT ENTITLED TO HIS FREEDOM UNDER THE LAWS OF THIS STATE, THE MASTER MUST PURSUE SUCH REMEDY FOR HIS RECOVERY AS THE LAWS OF THE STATE HAVE PROVIDED FOR HIM."

In affirming this principle, Judge WASHINGTON merely conformed to the law of every country on earth which has any law, for it is impossible that the *status* of an individual within the jurisdiction of any government can be regulated otherwise than by the law of that government. It is said that in this case, Mr. Wheeler was merely *in transitu* with his slaves—passing through the State of Pennsylvania, and that, therefore, they had not become free by being voluntarily brought into it. If that were so, it would still be so by the law of Pennsylvania, for no other law exists in the case, no clause in the constitution of the United States applies to it. The domestic institutions of each State, including the rights of personal property, the *status* of individuals and the relations of husband and wife, parent and child, master and apprentice, master and slave, etc., are subject to the regulations which the State itself may choose to adopt, and those who voluntarily come upon her soil or within her jurisdiction, must, while there, abide by them. The Constitution of the United States provides that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, and under that clause, a citizen of another State who comes to Pennsylvania is entitled to all the immunities and privileges of a citizen of Pennsylvania, but to no others. To those, and those only, was Mr. Wheeler entitled under that clause. I am not aware that, until within some two or three years past, it has ever been seriously contended any where that the *status* of an individual is not to be governed by the law

of the jurisdiction in which he actually is for the time, whether for the purpose of transit or any other purpose. In fact, no such principle would be practicable or possible to be carried into effect consistently with the provision of any law, without creating utter confusion. Take, for instance, the case of a master and slave. The Constitution of the United States is part of the law of Pennsylvania, and provides that a fugitive from service, escaping from another State, shall be delivered up to his claimant. While such fugitive is in custody within the State of Pennsylvania, it is for the purpose of being so delivered up, and carried out of the State, and the same law applies to him as to other prisoners lawfully in custody. But as the Constitution of the United States does not provide for the case of a slave voluntarily brought by his owner into Pennsylvania, suppose that by the law of Pennsylvania, the relation of master and slave has been absolutely abolished, and that, notwithstanding, it should be determined that the relation shall continue to exist between master and slave in transit through the State, what will follow? The relation of master and slave, like every other relation, consists in their reciprocal rights and duties, and their sanctions. In the case supposed, the law of Pennsylvania recognizes no rights or duties or sanctions. Is the law of another State to be superinduced upon the soil of Pennsylvania? And if so, how is it to be enforced? If the tribunals of Pennsylvania be appealed to, they have no jurisdiction but what has been conferred by her constitution and laws; and in the case supposed, none would have been conferred over the subject. If the tribunals of the United States be appealed to, the constitution of the United States has no provision on the subject.

How then are the rights of the master to be enforced? Is he to be left to execute the laws of his own State upon the slave at his own pleasure, and according to his own understanding? If so, suppose a citizen of Pennsylvania seduces or abducts his slave, is the master also to execute the law, as he understands it, upon such citizen? That would be clearly not to be tolerated; and yet in the case supposed, no Court or tribunal exists that would have any jurisdiction in the case, or any law applicable to it.

The same obstacles would exist to the introduction of the principle, in the case of any other relations, whether of person or property. It is impossible even to conceive, much less to establish, the practicability of any such system. In this case, therefore, the question of the right of the master and his alleged slaves, voluntarily brought into Pennsylvania, whether in transit or otherwise, depended on the law of Pennsylvania

and on nothing else. The legislature of Pennsylvania, from comity or courtesy, might provide that the relation should continue in such case, and certainly did so provide in the act of 1780, under which the relation in such a case was governed and regulated by our own previously existing Slave Laws, which were continued in force for that purpose. But such comity or courtesy is to be exercised by the legislative authorities, and if they have repealed that provision, no judicial tribunal has a right to re-establish it.

III. I shall not discuss the question whether these alleged slaves did by the law of Pennsylvania become free or not. I think it wholly immaterial to the matter now before the Court. That question, if it be a question, is no doubt interesting to the parties concerned in it, and it may become highly material to Mr. Williamson, if Mr. Wheeler should proceed against him civilly or criminally in an appropriate forum. As a citizen of another State, he has, of course, a right to a civil action against Mr. Williamson, being a citizen of Pennsylvania, in the Circuit Court of the United States, by reason of the *parties*, and not of the *subject matter*, and if such an action should be brought, it would be the duty of that Court to administer in this regard the law of Pennsylvania, and no doubt they would do so. If he should choose to proceed to enforce any alleged right against Mr. Williamson, or to punish any alleged offence of his, the Courts of Pennsylvania are also open to him. But that is not the question. Therefore, I repeat, that I will not argue the question whether these persons are by law free or not; though after reading the act of 1780, and the act of 1847, it may admit of no doubt that they were in fact, by our law, as free as any other persons upon our soil, and that the comity or courtesy which had been extended by the former act, was (whether for sufficient reasons or not, it is not for me or the Court to decide,) withdrawn by the latter. We are all bound to respect the lawful exercise of the legislative power by the constituted authorities of our own Commonwealth, and it is our duty to obey their acts. Forced into an *ex parte* argument, I shall not ask the Court, in the absence of Mr. Wheeler, to express an opinion upon a question which I conceive to be not material to the matter in hand, and on which he certainly has a right to be heard.

IV. On this state of the case I submit that the District Court of the United States, nor the Judge thereof, had no authority whatever to issue the writ of *habeas corpus* under which the present petitioner was committed. Congress could not, under the provisions of the Constitution, have conferred such authority upon any tribunal of the United States, and, even if they could, they have not done so. It is clearly and

absolutely a direct usurpation without color or right. I am not dealing with the motives of the learned Judge of the District Court, for every man is subject to error of judgment, and besides the esteem and personal regard which I entertain for that learned Judge, my respect for this Court would prevent me from the discourtesy of making it an arena in which to assail unnecessarily the motives of a Judge sitting in another tribunal.

Still the question remains, in what clause of the Constitution, or in what act of Congress, is to be found a word or syllable that can be so construed as to validate the jurisdiction which he has assumed in this case? And the answer is, *in nonc*.

The writ of *habeas corpus* is not a proceeding *inter partes*, and if it were, and the parties were considered to be Mr. Wheeler and Mr. Williamson, the Circuit Court of the U. S. would have jurisdiction in a civil action by reason of their respective citizenship, not because of the subject matter; but even in that case the District Court of the U. S. could have none

But the *habeas corpus cum causa* is not at all a proceeding *inter partes*. It is the inquisition of the Crown into the cause of the imprisonment of one of its subjects:—it is the inquisition of the Commonwealth into the cause of the imprisonment of one of her citizens, or of any human being on her soil:—and it can be prosecuted only in the courts of the government upon whom the protection of the liberty of the individual, in the particular case devolves.

Judge BETTS' opinion in the case of *Barry* vs. *Mercien*, contains so clear and lucid an explanation of the law on this subject, that it is not necessary to do more than to refer to it.

Now, under the Constitution of the United States, what interest has the government of the United States in the question of the domestic relations of individuals on the soil of Pennsylvania, or of the domestic institutions of this or any other State, or how has the protection of such relations or such institutions been devolved upon any branch of that government? Not only is there nothing in the letter of the Constitution of the United States to sanction such a claim, but it is inconsistent with, and subversive of, the whole spirit, intent and meaning of that instrument, and of the inherent and essential rights of the several States. It goes to the root of our frame of government, and it would be destructive of all its principles.

Even if this were not so, no act of Congress has conferred the power to issue a *habeas corpus* in such case.

The powers of the District Court to issue writs of *habeas corpus* are three-fold.

1. Under the act of 1789, to issue that writ in cases necessary for the exercise of its jurisdiction, and agreeable to the principles and usages of law. But in this case that Court had no jurisdiction for the exercise of which this *habeas corpus* was either necessary or agreeable to the principles and usages of law.

2. A judge of the District Court (by the same Act) may grant a writ of *habeas corpus* for the purpose of inquiring into the cause of commitment (*that is to say, commitment under process*) provided such writs shall in no case extend to prisoners in jail (*that is, so committed*) unless they are in custody under or by color of the authority of the United States, or are committed for trial before some Court of the same, or are necessary to be brought into Court to testify. This case cannot be pretended to be within any of those clauses.

3. Under the "Force Bill" the District Court of the United States may issue a *habeas corpus* in certain cases of persons committed under a State authority by reason of acts done in pursuance of an act of Congress of the United States. This case does clearly not fall within that clause. The opinion of Judge Betts, in *Barry* vs. *Mercein*, above mentioned, shows conclusively that in this case no jurisdiction whatever to award a *habeas corpus* existed in the District Court. It is clear, therefore, that the District Court had, neither under any clause in the Constitution, nor under any act of Congress, jurisdiction over the subject matter, or to award the writ of *habeas corpus* under the proceedings in which Mr. Williamson was committed, and that all those proceedings, including his commitment, were null and void, as if a private person without any judicial authority had assumed to conduct and enforce them.

V. I have thus far considered the case as it stands upon the record, and as the facts are known to exist, and to be undisputed. But it has been suggested, that in some way or other, a presumption may be raised of a fact, not appearing on the record, and well known not to be true, viz: (*that the alleged slaves were fugitives, and had escaped from Virginia or North Carolina into Pennsylvania,*) by which presumption, the jurisdiction of the District Court may be endeavored to be bolstered.

1. I deny that any such presumption can lawfully be made. The Courts of the United States, being courts of limited jurisdiction, the circumstances necessary to give them jurisdiction, ought to appear affirmatively on their record, and if they do not so appear they cannot be presumed.

2. If the Court had the discretion, in any case, to raise such a presumption, they would not raise it against what they know to be the real truth and verity of the case.

3. This record shows no finding of any fact, or proof of any fact or decision of the Judge of the Court upon any fact necessary to give jurisdiction. Suppose the Court were to raise the presumption that the petitioner in the District Court stated in his petition that these were fugitives, and had escaped from the State of Virginia, which he has not stated, still, for all that appears upon the record, it would remain merely as the statement of his petition. For, though the record shows that there was a return, yet it does not show that there was a traverse, though no doubt what was called a traverse was admitted by parole against law, as I consider it, yet the commitment is as for a contempt in refusing to make any return, and upon this record the presumption referred to would be to supply a defect in the mere statement of the petitioner himself, and not a presumption of *amnia rite acta* by the Judge.

In the *habeas corpus* under which the Judge of the same District Court discharged the defendants in Thomas vs. Crosson, who were held under a *capias* specially allowed by a Judge of this Court upon affidavits in a case in which the jurisdiction of this Court was undoubted, he held himself so far from being bound to raise presumptions in favor of the decision which had been made by the Judge of this Court, or to supply any defects in the affidavits on which that decision was grounded, that on a very critical examination of the affidavits, he arrived at the conclusion that the judge had been wrong in allowing the *capias*, and therefore discharged the prisoners.

4. Even if this record had shown these persons to be fugitives from service, having escaped from another State, and therefore within the provisions of the constitution of the United States, and if that fact had been undisputed, still the District Court would have had no jurisdiction to award the writ of *habeas corpus* now complained of. The act of 1850, purports to give that Court, as well as the Commissioners of the United States, jurisdiction to issue a warrant for the arrest of the fugitive, and also in case of rescue or abduction to give the District Court jurisdiction to proceed by indictment against the rescuer or abductor, and on conviction, after trial by jury, to inflict an imprisonment not exceeding six months, and a fine not exceeding a certain sum. But it cannot be pretended that that act gives any right to issue a *habeas corpus* against any citizen of Pennsylvania in whose custody the alleged fugitive might be alleged to be. The warrant would take the fu-

gitive from any private custody. The writ of *habeas corpus* is unnecessary for the exercise of his jurisdiction in this case.

The Commissioners of the United States, mere officers appointed by the Judges, and removable at their pleasure, have the same jurisdiction in regard to the issuing of warrants for fugitives, that the Judges of the Courts themselves have, and have all the powers necessary to the exercise of that jurisdiction, but of course they would have no power to issue a writ of *habeas corpus*. Nor can it be conceived in any case that the writ of *habeas corpus* is necessary to the exercise of the jurisdiction of granting a warrant immediately for the arrest of the fugitive. It is equally clear that the issuing and proceedings on a writ of *habeas corpus*, such as have occurred in this case, are not only not authorized by the act of 1850, but are implicitly prohibited by that statute; for when it provides for the indictment trial, and ultimate punishment of a rescuer or abductor, it does in effect provide that he shall not be in any shape convicted of such abduction without a trial by jury, or in case he be guilty of it, be coerced by an imprisonment for contempt on a *habeas corpus*, or in any other mode to restore the fugitive. The restitution of the fugitive is no part of the judgment provided for against him. The common law proceeding *de homine replegiando* (which is by no means unfamiliar in our practice,) or an action for damages remain open to the party claimant, in which also the trial is to be by jury. Congress has authorized a summary decision without jury, upon the claim to the fugitive slave, but has not given the shadow of authority to any Judge, Court, or Commissioner of the United States, without jury, summarily to decide upon the fact of the abduction of the slave by a citizen, and having found that, to coerce the restitution of the fugitive by the indefinite imprisonment of the alleged abductor. The proceedings here complained of would have been glaringly and clearly beyond the jurisdiction of the District Court, even if these persons had been fugitives. The proceedings would have been just as null and void as they are now.

Third. In every case in which one Court has refused to inquire into the causes of commitment for contempt by another Court, the ground is clearly stated that the refusal was because the committing Court was a Court of competent jurisdiction over the subject matter on which the contempt was alleged to have arisen. It follows, therefore, from all these cases, which I need not repeat, that if the Court be not a Court of such competent jurisdiction, a commitment for contempt is no more beyond remedy than any other commitment.

In Holden vs. Smith, 14 Ad. and Ell. N. S. 8 41, already referred

to, not only does it appear that the party was discharged on a habeas corpus, but afterwards judgment was obtained in an action for trespass for false imprisonment against the judge of a Court of record who had gone beyond his jurisdiction in committing the plaintiff for a contempt, in disobeying illegal process. The cases cited in that report are referred to.

It has been suggested that in some mode the present Petitioner is to be injured or his rights affected, because he did not object to the want of jurisdiction of the District Court before that Court itself. I would observe upon this,

1. That it does not appear by the record that he had any reason to raise the objection there, for as his return was that he had not, and never had, the possession or custody of the parties named in the writ, and as that return was by law conclusive, it was surely not incumbent on him to raise the abstract question whether, if he had them, he would have been bound to produce them.

2. It appears from the statement of the Petitioner as to the course of the proceedings and the time that was occupied by them, and the suddenness with which the whole matter was pressed upon him, that it would have required extraordinary presence of mind to raise any objection. Perhaps few men would have been able to collect their thoughts. The traverse of the return—the evidence upon that—the question of his commitment for perjury—the question of his commitment for contempt in refusing to make any return—would appear to have been all going on simultaneously, and the hearing upon all to have been concluded within the space of something more than two hours. I can have no personal knowledge of the facts, (not having been present at or concerned in that hearing,) but, taking the Petitioner's statement of them, he would appear rather to have been *hustled* than heard.

3. It is believed to be the first time that the proposition has been advanced, that a party unlawfully summoned in judgment before a tribunal that has no jurisdiction, is bound to make the objection of the want of it. In the case of *Holden vs. Smith* it did not appear that any objection to the want of jurisdiction was made in the Court whose acts were complained of. In the case of *Thomas vs. Crosson*, decided by three Judges of this Court, it did not appear that any such objection was made. Yet in both these cases the proceedings were held to be null and void. In no case that I am aware of, where the question has been of the nullity of the proceedings for want of jurisdiction, has it been deemed material to inquire whether such objection was made, unless where *motive* becomes material to inflame

damages. Indeed, if there be no jurisdiction, there is as little to decide the question of jurisdiction as any other. How is it that a party can lose his rights, by refusing to submit the question of jurisdiction to a Court that is incompetent to decide it? In certain civil cases in the Supreme Court of the United States, referred to by the Chief Justice, in his recent opinion, it has, indeed, been held that where the jurisdiction of Courts of the United States did not appear affirmatively on the record, they would not hold the proceedings absolutely null and void, as regarded the parties, as they might be reversed upon writ of error. But I do not understand that in these cases the party lost his right to object to the want of jurisdiction, by omitting to make the objection in the Court below. On the contrary, I gather from them that the decision would have been the same, even if that objection had been so made.

I speak of the opinion recently delivered by the learned Chief Justice of this Court in this case, without any reserve, because I know that if from the haste with which it was necessarily prepared, he has fallen into error, no man living will be so anxious to correct that error as himself.

I observe upon these cases—

1. That they were merely civil actions *inter partes*.

2. That it is probable that the defects in the averments there were merely formal and accidental, and that, according to the real truth of the facts, the Courts had jurisdiction.

3. That no offer was made to go behind the record of a Court of limited jurisdiction, and show, as is offered to be done here, that in truth the fact necessary to give jurisdiction did not exist.

4. That in these cases there was a fact consistent with the record, a presumption of which might be raised, that would give the Courts jurisdiction; whereas, in the present case, as I have endeavored to show, there is no fact consistent with the record which, even if the presumption of it be raised, would bring the case within the jurisdiction of the District Court. If the Court of Common Pleas of Philadelphia were to entertain an action of ejectment for land in Allegheny county, can it be supposed for a moment that the Sheriff would be justified in executing an *habere facias* under its judgment, or that the defendant would be bound to defend the action, or reverse the judgment on error? No man can maintain that to be the law.

5. That the reason upon which those decisions appear to be founded, to wit: that a party in the suit has another remedy, by reversing the judgment on a writ of error, does not exist here, the Supreme Court of

the United States having decided, in the case of *Barry* vs. *Mercein*, in 5 *Howard*, that no writ of error lies to the decision of an inferior Court of the United States on a *habeas corpus*.

6. I will observe further that if a writ of error did lie from the decision of the District Court, it would only be to another Court of the United States, and the case of the Petitioner here would be as strong as it is now, even if the Supreme Court of the United States had affirmed the decision of the District Court. Where the question is of a direct usurpation by the Courts of the United States upon the rights of the State, it is immaterial by which of such Courts that usurpation is made, and though none such can be anticipated from so august a tribunal as the Supreme Court of the United States, still, in point of law, if it were attempted, the duty of checking it would devolve upon the State tribunals. In *Olmsted's case*, already cited, in which Chief Justice Tilghman expressed clearly the extent and ground of that duty, the proceeding was in fact under a decision of the Supreme Court of the United States, who had awarded a *mandamus* to the District Court to issue the process complained of. In fact every proceeding by which the Courts of one Government do in fact usurp upon the rights of another, is null and void as against the Government usurped upon, and is to be so held in her Courts, who, where the substantial fact of usurpation exists, have no right to resort to fictitious presumptions against the truth, for the purpose of supporting the usurpation which it is their duty to resist.

I have endeavored to establish my positions. As regards the proceedings of the District Court, I have argued the question of jurisdiction only. The errors in law in other respects of these proceedings I shall not enter upon. The odd use of the writ of habeas corpus in applying it to the purpose of depriving a party of liberty, instead of restoring it; —the allowing a traverse of the return, which can only be allowed by statute, and which no statute allows in the Courts of the United States —the taking that traverse by parole merely—the assuming to decide upon it the fact of abduction upon insufficient evidence, and from that to deduce a continuance of custody on no evidence at all—the absolute inconsistency of the record, which, after setting out a full, complete, and unevasive return, proceeds to a commitment for a supposed refusal to make any return,—I do not know that all these and other errors, would of themselves enable this Court to interfere, if the District Court had jurisdiction of the case. But as that Court had no jurisdiction, these circumstances, all of them operating oppressively on a citizen entitled to your protection, do greatly aggravate the case, and enhance, if that be possible, your just obligation to relieve him. They do indeed tend to

show a want of jurisdiction, for surely Providence would never have permitted a court of competent jurisdiction to fall into so many errors in one case.

Nor shall I say anything of the official position of Mr. Wheeler. I regard him as a citizen of another State, and entitled, while here, to all the immunities and privileges of a citizen of Pennsylvania. His position as a minister of the United States to a foreign country, neither diminishes nor enhances his privileges in this.

This argument is necessarily summary and incomplete, both as regards the illustrations and the authorities. Of the latter, the few to which I have referred have been principally the decisions of highly esteemed judges of the Courts of the United States and of this State. We desire only that those safe and reasonable views of their own powers which they have heretofore expressed, shall continue to be acted on by the successors of both.

We do not ask this Court to trench in any way upon the just authority of the United States. They have a large scope in the construction of the constitution and statutes under which they act. It is right that great deference should be always paid to their construction of the meaning of any clause in the constitution of the United States, or in any act of Congress, and that as a general rule such construction should be left very much to them ; but where (as in this case) there is no clause in the constitution, or in any act of Congress, which upon any construction can be held even to refer to the subject matter over which a Court of the United States undertakes to assume jurisdiction—where the usurpation therefore is obvious and palpable—the citizen can have no recourse for relief but to the Courts of his own State.

I now leave the matter in the hands of the Court. It is impossible to conceal from ourselves the fact that the essential rights of this Commonwealth are invaded. This position of things is inauspicious. To correct it nothing is wanted but the firm and temperate discharge of your duties as magistrates and ministers of the law.

Pennsylvania has always truly performed her duties to her sister States. If it were justifiable to occupy the time with matter not directly pertinent to this case, I would go into the details and show how clear of just reproach her career has been. Whatever may happen, she will never be mean enough to enjoy the benefits of the Constitution, and at the same time refuse to fulfil in good faith her obligations under it. She deserves all our love and affection. Yet there may be some—sons, too, of her soil—who ignore the assault upon her liberties —who affect not to see that she is struck at and hurt—who, in the

fervency of their superserviceable protestations of fealty to the domestic laws and institutions of other States, have no time nor thought to bestow upon the question of the invasion or even overthrow of their own.

The question here has nothing to do with the rights or wrongs, the conduct or misconduct of the North or the South. It concerns principles upon which all are agreed. *That each State has the right to regulate her own domestic relations and institutions—that the Courts of the United States have no right to interfere with or control them—that citizens of other States who come upon her soil are, while there, bound to respect and obey her laws:—these*, I say, are the principles involved here, and they are quite as dear to the SOUTH as to the NORTH, they ought to be quite as dear to the NORTH as to the SOUTH.

It has come to the point that, failing your aid, they are no longer safe in Pennsylvania. I invoke that aid with confidence, and, if it be granted, the rights of the commonwealth will have been vindicated, and the affair from which these questions have originated—untoward in all its aspects—will be left to be determined by the laws of the State in some appropriate forum.

On the 8th day of September, 1855, the Supreme Court (all the Judges present) met at Philadelphia, when the decision of the Court was pronounced by Justice BLACK in the following opinion, Justice KNOX dissenting.

OPINION OF JUSTICE BLACK.

This is an application by Passmore Williamson for habeas corpus.—He complains that he is held in custody under a commitment of the District Court of the United States for a contempt of that Court in refusing to obey its process. The process which he is confined for disobeying, was a habeas corpus commanding him to produce the bodies of certain colored persons claimed as slaves under the laws of Virginia.

Is he entitled to the writ he has asked for? In considering what answer we shall give to this question, we are, of course, expected to be influenced, as in other cases, by the Law and the Constitution alone. The gentlemen who appeared as counsel for the petitioner, and who argued the motion in a way which did them great honor, pressed upon us no considerations, except those which were founded upon their *legal* views of the subject.

It is argued with much earnestness, and no doubt with perfect sincer-

ity, that we are bound to allow the writ, without stopping to consider whether the Petitioner has or has not laid before us any probable cause for supposing that he is illegally detained—that every man confined in prison, except for treason or felony, is entitled to it *ex debito justitiæ*—and that we cannot refuse it without a frightful violation of the Petitioner's rights, no matter how plainly it may appear on his own showing that he is held in custody for a just cause. If this be true, the case of ex parte Lawrence, (5 Binn. 304,) is not law. There the writ was refused, because the applicant had been previously heard before another Court. But if every man who applies for a habeas corpus must have it, as a matter of right, and without regard to anything but the mere fact that he demands it, then a Court or a Judge has no more power to refuse a second than a first application.

Is it really true that the special application, which must be made for every writ of habeas corpus, and the examination of the commitment, which we are bound to make before it can issue, are mere hollow and unsubstantial forms? Can it be possible that the Law and the Courts are so completely under the control of their natural enemies that every class of offenders against the Union, the State, except traitors and felons, may be brought before us as often as they please, though we know beforehand, by their own admissions, that we cannot help but remand them immediately? If these questions must be answered in the affirmative, then we are compelled, against our will and contrary to our convictions of duty, to wage a constant warfare against the federal tribunals by firing off writs of habeas corpus upon them all the time. The punitive justice of the State would suffer still more seriously. The half of the Western Penitentiary would be before us at Philadelphia, and a similar proportion from Cherry Hill and Moyamensing would attend our sittings at Pittsburgh.

To remand them would do very little good, for a new set of writs would bring them all back again. A sentence to solitary confinement would be a sentence that the convict should travel for a limited term up and down the State, in company with the officers who might have him in charge. By the same means the inmates of the lunatic asylums might be temporarily enlarged, much to their own detriment; and every soldier or seaman in the service of the country could compel their commanders to bring them before the Court six times a week.

But the habeas corpus act has never received such a construction. It is a writ of right, and may not be refused to one who shows a *prima facie* case, entitling him to be discharged or bailed. But he has no right to demand it who admits that he is in legal custody for an offence not bail-

able: and he does make what is equivalent to such an admission when his own application, and the commitment referred to in it, show that he is lawfully detained. A complaint must be made, and the cause of detainer submitted to a judge, before the writ can go. The very object and purpose of this is to prevent it from being trifled with by those who have manifestly no right to be set at liberty. It is like a writ of error in a criminal case, which the Court or Judge is bound to allow, if there be reason to suppose that an error has been committed, and equally bound to refuse it, if it be clear that the judgment must be affirmed.

We are not aware that any application to this Court for a writ of habeas corpus has ever been successful, where the Judges, at the time of the allowance, were satisfied that the prisoner must be remanded. The petitioner's counsel say that there is but one reported case in which it was refused, (5 Binn. 304;) and this is urged in the argument as a reason for supposing that, in all other cases, the writ was issued without examination. But no such inference can be fairly drawn from the scarcity of judicial decisions on a point like this. We do not expect to find in reports so recent as ours those long established rules of law which the student learns from his elementary books, and which are constantly acted upon without being disputed.

The habeas corpus is a common law writ, and has been used in England from time immemorial, just as it is now. The statute of 31 Charles II. c. 2, made no alteration in the practice of the courts in granting these writs. (3 Barn. and Ald. 420—2 Chitty's Reps., 207.) It merely provided, that the Judges in vacation should have the power which the courts had previously exercised in term time, (1 Chitty's Gen. Prac. 686,) and inflicted penalties upon those who should defeat its operation. The common law upon this subject was brought to America by the colonists; and most, if not all of the States, have since enacted laws resembling the English statute of Charles II., in every principal feature. The Constitution of the United States declares that "the privilege of a writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it." Congress has conferred upon the federal judges the power to issue such writs according to the principles and rules regulating them in other Courts. Seeing that the same general principles of common law on this subject prevailed in England and America, and seeing also the similarity of the statutory regulations in both countries, the decisions of the English judges as well as of the American Courts, both State and Federal, are entitled to our fullest respect as settling and defining our powers and duties.

Blackstone (3 Com. 132) says the writ of habeas corpus should be

allowed only when the Court or Judge is satisfied that the party hath probable cause to be delivered. He gives cogent reasons why it should not be allowed in any other case, and cites with unqualified approbation the precedent set by Sir Edward Coke and Chief Justice Vaughan in cases where they had refused it. Chitty lays down the same rule. (1 Cr. Law, 101 ; 1 Gen'l Prac., 686–7). It seems to have been acted upon by all the Judges. The writ was refused in Rex vs. Schiever, (1 Burr 765,) and in the case of the three Spanish Sailors (2 Blacks. R. 1324.)

In Hobhouse's case (3 Barn. and Ald., 420,) it was fully settled by an unanimous Court, as the true construction of the statute, that the writ is never to be allowed, if upon view of the commitment it be manifest that the prisoner must be remanded. In New York, when the statute in force there was precisely like ours, (so far I mean as this question is concerned,) it was decided by the Supreme Court (5 Johns. 282) that the allowance of the writ was a matter within the discretion of the Court, depending on the grounds laid in the application. It was refused in Huster's case (1 Johns. C. 136,) and in ex parte Ferguson (9 Johns. R. 139.)

In addition to this, we have the opinion of Chief Justice Marshall in Watkin's case, (3 Peters, 202,) that the writ ought not to be awarded if the Court is satisfied that the prisoner must be remanded. It was accordingly refused by the Supreme Court of the United States in that case, as it had been before in Kearney's case.

On the whole, we are thoroughly satisfied that our duty requires us to view, and examine the cause of detainer *now*, and to make an end of the business at once, if it appears that we have no power to discharge him on the return of the writ.

This prisoner, as already said, is confined on a sentence of the District Court of the United States for a contempt. A habeas corpus is not a writ of error. It cannot bring a case before us in such a manner that we can exercise any kind of appellate jurisdiction in it.

On a habeas corpus, the judgment even of a subordinate State Court cannot be disregarded, reversed or set aside, however clearly we may perceive it to be erroneous, and however plain it may be that we ought to reverse it, if it were before us on appeal or writ of error. We can only look at the record to see whether a judgment exists, and have no power to say whether it is right or wrong. It is conclusively presumed to be right until it is regularly brought up for revision.

We decided this three years ago, at Sunbury, in a case which we all thought one of much hardship. But the rule is so familiar, so univer-

sally acknowledged, and so reasonable in itself, that it requires only to be stated. It applies with still greater force, or at least for much stronger reasons, to the decisions of the Federal Courts.

Over them we have no control at all under any circumstances, or by any process that could be devised. Those tribunals belong to a different judicial system from ours. They administer a different code of laws, and are responsible to a different sovereignty.

The District Court of the U. S. is as independent of us as we are of it—as independent as the Supreme Court of the U. S. is of either. What the law and the Constitution have forbidden us to do directly on writ of error, we of course, cannot do indirectly by habeas corpus.

But the petitioner's counsel have put his case on the ground that the whole proceeding against him in the District Court was *coram non judice*, null and void.

It is certainly true that a void judgment may be regarded as no judgment at all; and every judgment is void, which clearly appears on its own face to have been pronounced by a Court having no jurisdiction or authority in the subject matter.

For instance, if a Federal Court should convict and sentence a citizen for libel; or if a State Court, having no jurisdiction except in civil pleas should try an indictment for a crime and convict the party—in these cases the judgments would be wholly void.

If the Petitioner can bring himself within this principle, then there is no judgment against him; he is wrongfully imprisoned, and we must order him to be brought out and discharged.

What is he detained for? The answer is easy and simple. The commitment shows that he was tried, found guilty, and sentenced for *contempt of Court*, and nothing else. He is now confined *in execution of that sentence*, and for no other cause. This was a distinct and substantive offence against the authority and government of the United States. Does anybody doubt the jurisdiction of the District Court to punish the contempt of one who disobeys its process? Certainly not. All courts have this power, and must necessarily have it. Without it they would be utterly powerless. The authority to deal with an offender of this class belongs exclusively to the Court in which the offence is committed, and no other Court, not even the highest, can interfere with its exercise, either by writ of error, mandamus, or habeas corpus. If the power be abused, there is no remedy but impeachment. The law was so held by this Court in McLoughlin's Case, (5 W. & S. 275,) and by the Supreme Court of the U. S., in Kearney's Case, (7 Wheaton, 38.) It was solemnly settled, as part of the common law, in Brass Crossby's

Case, (3 Wilson, 183) by a Court in which sat two of the foremost jurists that England ever produced. We have not the smallest doubt that it is the law; and we must administer it as we find it. The only attempt ever made to disregard it was by a New York Judge, (4 Johns. R. 345,) who was not supported by his brethren. This attempt was followed by all the evil and confusion which Blackstone and Kent and Story declared to be its necessary consequence. Whoever will trace that singular controversy to its termination will see that the Chancellor and the majority of the Supreme Court, though once outvoted in the Senate, were never answered.

The Senate itself yielded to the force of the truths which the Supreme Court had laid down so clearly, and the judgment of the Court of Errors in Yate's case, (6 Johns. 503) was overruled by the same Court the year afterwards, in Yates vs. Lansing, (9 Johns. R. 423,) which grew out of the very same transaction, and depended on the same principles. Still further reflection, at a later period, induced the Senate to join the popular branch of the Legislature in passing a statute which effectually prevents one Judge from interfering by habeas corpus with the judgment of another, on a question of contempt.

These principles being settled, it follows irresistibly that the District Court of the United States had power and jurisdiction to decide what acts constitute a contempt against it; to determine whether the petitioner had been guilty of contempt, and to inflict upon him the punishment which, in its opinion, he ought to suffer. If we fully believed the Petitioner to be innocent—if we were sure that the Court which convicted him misunderstood the facts or misapplied the law—still we could not re-examine the evidence, or re-judge the justice of the case, without grossly disregarding what we know to be the law of the land. The Judge of the District Court decided the question on his own constitutional responsibility. Even if he could be shown to have acted tyrannically or corruptly, he could be called to answer for it only in the Senate of the United States.

But the counsel of the Petitioner go behind the proceeding in which he was convicted, and argue that the sentence for contempt is void, because the Court had no jurisdiction of a certain other matter, which it was investigating, or attempting to investigate, when the contempt was committed. We find a judgment against him in one case; and he complains about another, in which there is no judgment. He is suffering for an offence against the United States; and he says he is innocent of any wrong to a particular individual. He is conclusively adjudged guilty of contempt; and he tells us that the Court had no jurisdiction to restore Mr. Wheeler's slaves.

It must be remembered that contempt of Court is a specific criminal offence. It is punished sometimes by indictment and sometimes in a summary proceeding, as it was in this case. In either mode of trial, the adjudication against the offender is a conviction, and the commitment in consequence is execution. (7 Wheat. 38.) This is well settled, and, I believe, has never been doubted. Certainly the learned counsel for the Petitioner has not denied it. The contempt may be connected with some particular cause, or it may consist in misbehavior, which has a tendency to obstruct the administration of justice generally. When it is committed in a pending cause, the proceeding to punish it is a proceeding by itself. It is not entitled in the cause pending, but on the criminal side (Wall, 134.)

The record of a conviction for contempt is as distinct from the matter under investigation when it was committed, as an indictment for perjury is from the cause in which the false oath was taken. Can a person, convicted of perjury, ask us to deliver him from the penitentiary, on showing that the oath on which the perjury is assigned, was taken in a cause of which the Court and no jurisdiction? Would any Judge in the Commonwealth listen to such reasons for treating the sentence as void? If, instead of swearing falsely, he refuses to be sworn at all, and he is convicted not of perjury, but of contempt, the same rule applies, and with a force precisely equal. If it be really true that no contempt can be committed against a Court while it is inquiring into a matter beyond its jurisdiction, and if the fact was so in this case, then the Petitioner had a good defence, and he ought to have made it on his trial. To make it after conviction is too late. To make it here is to produce it before the wrong tribunal.

Every judgment *must* be conclusive until reversed. Such is the character, nature and essence of all judgments. If it be not conclusive it is not a judgment. A Court must either have power to settle a given question finally and forever, so as to preclude all further inquiry upon it, or else it has no power to make any decision at all. To say that a Court may determine a matter, and that another Court may regard the same matter afterwards as open and undetermined, is an absurdity in terms.

It is most especially necessary that convictions for contempt in one Court should be final, conclusive and free from re-examination by other Courts on habeas corpus. If the law were not so, our judicial system would break to pieces in a month. Courts totally unconnected with each other would be coming in constant collision. The inferior Courts would revise all the decisions of the Judges placed over and above them. A party unwilling to be tried in this Court need only defy our authority, and if

we commit him, take out his habeas corpus before an Associate Judge of his own choosing, and if that Judge be of opinion that we ought not to try him, there is an end of the case.

This doctrine is so plainly against the reason of the thing that it would be wonderful, indeed, if any authority for it could be found in the books. There is none, except the overruled decision of Mr. Justice Spencer, of New York, and some efforts of the same kind to control the other courts, made by Sir Edward Coke, in the King's Bench, which are now universally admitted to have been illegal, as well as rude and intemperate. On the other hand, we have all the English judges, and all our own, disclaiming their power to interfere with, or control, one another in this way. I will content myself by simply referring to some of the books in which it is established that the conviction of contempt is a separate proceeding, and is conclusive of every fact which might have been urged on the trial for contempt, and among others want of jurisdiction to try the cause in which the contempt was committed. 4 Johns. R. 325, et sequ. The opinion of Ch. J. Kent, on pages 370 to 375. 6 Johns. 563. 9 Johns. 423. 1 Hill, 170. 5 Iredell, 199. ib. 153. 2 Sandf. 724. 1 Carter, 160. 1 Blackf. 166. 25 Miss., 886. 2 Wheeler's Criminal Cases, p. 1. 43 Ad. and Ellis, 558.

These cases will speak for themselves, but I may remark as to the last one that the very same objection was made there as here. The party was convicted of contempt in not obeying a decree. He claimed his discharge on habeas corpus, because the Chancellor had no jurisdiction to make the decree, being interested in the cause himself. But the Court of Queen's Bench held that if that was a defence it should have been made on the trial for contempt, and the conviction was conclusive. We cannot choose but hold the same rule here. Any other would be a violation of the law which is established and sustained by all authority and all reason.

But certainly the want of jurisdiction alleged in this case would not even have been a defence on the trial. The proposition that a Court is powerless to punish for disorderly conduct or disobedience of its process in a case which it ought ultimately to dismiss for want of jurisdiction, is not only unsupported by judicial authority, but we think it is new even as an argument at the bar. We ourselves have heard many cases through and through before we became convinced that it was our duty to remit the parties to another tribunal. But we never thought that our process could be defied in such cases more than in others.

There are some proceedings in which the want of jurisdiction would be seen at the first blush; but there are others in which the Court

must inquire into all the facts before it can possibly know whether it has jurisdiction or not. Any one who obstructs or baffles a judicial investigation for that purpose is unquestionably guilty of a crime for which he may and ought to be tried, convicted and punished. Suppose a local action to be brought in the wrong county; this is a defence to the action, but a defence which must be made out like any other. While it is pending neither a party nor an officer, nor any other person can safely insult the Court or resist its order. The Court may not have power to decide upon the merits of the case; but it has undoubted power to try whether the wrong was done within its jurisdiction or not.

Suppose Mr. Williamson to be called before the Circuit Court of the United States as a witness in a trial for murder, alleged to be committed on the high seas; can he refuse to be sworn, and at his trial for contempt, justify himself on the ground that the murder was in fact committed within the limits of a State, and therefore triable only in a State Court? If he can, he can justify perjury for the same reason. But such a defence for either crime has never been heard of since the beginning of the world. Much less can it be shown, after conviction, as a ground for declaring the sentence void.

The writ which the Petitioner is convicted of disobeying, was legal on its face. It enjoined upon him a simple duty, which he ought to have understood and performed without hesitation. That he did not do so, is a fact conclusively established by the adjudication which the Court made upon it. I say the writ was legal, because the act of Congress gives to all the Courts of the United States the power "to issue writs of habeas corpus when necessary for the exercise of their jurisdiction, and agreeable to the principles and usages of Law." Chief Justice Marshall decided, in Burr's trial, that the principles and usages referred to in this act were those of the common law. A part of the jurisdiction of the District Court consists in restoring fugitive slaves; and the habeas corpus may be used in aid of it when necessary. It was awarded here upon the application of a person who complained that his slaves were detained from him. Unless they were fugitive slaves, they could not be slaves at all, according to the Petitioner's own doctrine, and if the Judge took that view of the subject, he was bound to award the writ.

If the persons mentioned in it had turned out, on the hearing, to be fugitives from labor, the duty of the District Judge to restore them, or his power to bring them before him on a habeas corpus, would have been disputed by none except the very few who think that the Constitution and laws on that subject ought not to be obeyed. The duty of the Court

to inquire into the facts on which its jurisdiction depends is as plain as its duty not to exceed it when its duty is ascertained.

But Mr. Williamson stopped the investigation *in limine;* and the consequence is, that everything in the case remains unsettled—whether the persons named in the writ were slaves or free—whether Mr. Wheeler was the owner of them—whether they were unlawfully taken from him —whether the Court had jurisdiction to restore them—all these points are left open for want of a proper return. It is not our business to say how they ought to be decided; but we do not doubt that the learned and upright magistrate who presides in the District Court would have decided them as rightly as any judge in all the country. Mr. Williamson had no right to arrest the inquiry because he supposed that an error would be committed on the question of jurisdiction, or any other question. If the assertions which his counsel now make on the law and the facts be correct, he prevented an adjudication in favor of his proteges, and thus did them a wrong, which is probably a greater offence in his own eyes than anything he could do against Mr. Wheeler's rights. There is no reason to believe that any trouble whatever would have come out of the case if he had made a true, full, and special return of all the facts; for then the rights of all parties, black and white, could have been settled, or the matter dismissed for want of jurisdiction, if the law so required.

It is argued that the Court had no jurisdiction, because it was not averred that the slaves were fugitives, but merely that they owed service by the laws of Virginia. Conceding, for the argument's sake, that this was the only ground on which the Court could have interfered—conceding, also, that it is not substantially alleged in the petition of Mr. Wheeler—the proceeding was, nevertheless, not void for that reason. The Federal tribunals, though Courts of limited jurisdiction, are not *inferior* Courts. Their judgments, until reversed by the proper appellate Court, are valid and conclusive upon the parties, though the jurisdiction be not alleged in the pleadings nor on any part of the record, (10 Wheaton, 192). Even if this were not settled and clear law, it would still be certain that the fact on which jurisdiction depends need not be stated *in the process.* The want of such a statement in the body of the habeas corpus, or in the petition on which it was awarded, did not give Mr. Williamson a right to treat it with contempt. If it did, then the Courts of the United States must set out the ground of their jurisdiction, in every supœna for a witness: a defective or untrue averment will authorize the witness to be as contumacious as he sees fit.

But all that was said in the argument about the petition, the writ, and the facts which were proved, or could be proved, refers to the *evidence* on

which the conviction took place. This had passed *in rem judicatam*. We cannot go one step behind the conviction itself. We could not reverse it if there had been no evidence at all. We have no more authority in law to come between the prisoner and the Court to free him from a sentence like this, than we would have to countermand an order issued by the commander-in-chief to the United States army. We have no authority or jurisdiction to decide anything here, except the simple fact that the District Court had power to punish for contempt a person who disobeys its process—that the Petitioner is convicted of such contempt—and that the conviction is conclusive upon us. The jurisdiction of the Court on the case which had been before it, and everything else which preceded the conviction, are out of our reach; they are not examinable by us, and, of course, not now intended to be decided.

There may be cases in which we ought to check usurpation of power by the Federal Courts. If one of them would presume, upon any pretence whatever, to take out of our hands a prisoner convicted of contempt in this Court, we would resist by all proper and legal means. What we would not permit them to do against us, we will not do against them. We must maintain the rights of the State and its Courts, for to them alone can the people look for a competent administration of their domestic concerns; but we will do nothing to impair the constitutional vigor of the general government, which is "the sheet anchor of our peace at home and our safety abroad."

Some complaint was made in the argument about the sentence being for an indefinite time. If this were erroneous, it would not avail here; since we have as little power to revise the judgment for that reason, as for any other. But it is not illegal, nor contrary to the usual rule in such cases. It means commitment until the party shall make proper submission. (3 Lord Raymond 1103. 4 Johns. R. 375.) The law will not bargain with anybody to let its Courts be defied for a specified term of imprisonment. There are many persons who would gladly purchase the honors of martyrdom in a popular cause at almost any given price, while others are deterred by a mere show of punishment. Each is detained until he finds himself willing to conform.

This is merciful to the submissive and not too severe upon the refractory. The Petitioner, therefore, carries the key of his prison in his own pocket. He can come out when he will, by making terms with the Court that sent him there. But if he choose to struggle for a triumph, if nothing will content him but a clean victory or a clean defeat—he cannot expect us to aid him. Our duties are of a widely different kind. They consist in discouraging as much as in us lies all such contests with

the legal authorities of the country. *The writ of Habeas Corpus is refused.*

The following opinion was then delivered by Justice KNOX:

OPINION OF JUSTICE KNOX.

I do not concur in the opinion of the majority of this Court refusing the writ of habeas corpus, and shall state the reasons why, in my judgment, the writ should be granted.

This application was made to the Court whilst holding a special session in Bedford, on the 13th day of August, and upon an intimation from the counsel that in case the Court had any difficulty upon the question of awarding the writ, they would like to be heard. Thursday, the 16th of August, was fixed for the hearing. On that day an argument was made by Messrs. Meredith and Gilpin, in favor of the allowance of the writ.

I may as well remark here, that upon the presentation of the petition I was in favor of awarding a habeas corpus, greatly preferring that the right of the Petitioner to his discharge should be determined upon the return of the writ. If this course had been adopted, we should have had the views of counsel in opposition to the discharge, and, moreover, if necessary, we could, after the return, have examined into the facts of the case.

I am in favor of granting this writ, first, because I believe the Petitioner has the right to demand it at our hands. From the time of Magna Charta the writ of habeas corpus has been considered a writ of right, which every person is entitled to *ex merito justiciæ*. "But the benefit of it (says Chancellor Kent) was in a great degree eluded in England prior to the statute of Charles II., as the Judges only awarded it in term time, and they assumed a discretionary *power of awarding or refusing it.*" 2 Kent's Commentaries, 26. And Bacon says, "Notwithstanding the writ of habeas corpus be a writ of right, and what the subject is entitled to, yet the provision of the law herein being in a great measure eluded by the Judges being only enabled to award it in term time, as also by an *imagined notion of the Judges* that they had a discretionary power of granting or refusing it," the act of 31 Charles II. was made for remedy thereof.

I am aware that, both in England and in this country, since the passage of the statute of Charles II., it has been held that where it clearly appeared that the prisoner must be remanded, it was improper to grant the writ, but I know of no such construction upon our act of 18th February,

1785. The people of these United States have ever regarded the privilege of the habeas corpus as a most invaluable right, to secure which an interdiction against its suspension, "unless when in cases of rebellion or invasion the public safety may require it," is inserted in the organic law of the Union, and, in addition to our act of 1785, which is broader and more comprehensive than the English statute, a provision in terms like that in the Constitution of the United States is to be found in the Constitution of this State.

It is difficult to conceive how words could be more imperative in their character than those to be found in the statute of 1785. The Judges named are authorized and required, either in vacation or in term time, upon the due application of any person committed or detained, for any criminal or supposed criminal matter, except for treason or felony, or confined or restrained of his or her liberty under any color or pretence whatsoever, to award and grant a habeas corpus, directed to the person or persons in whose custody the prisoner is detained, returnable immediately. And the refusal or neglect to grant the writ required by the Act to be granted, renders the Judge so neglecting or refusing, liable to the penalty of three hundred pounds.

I suppose no one will doubt the power of the Legislature to require this writ to be issued by the Judges of the Commonwealth. And it is tolerably plain that where, in express words, a certain thing is directed to be done, to which is added a penalty for not doing it, no discretion is to be used in obeying the mandate.

The English statute confined the penalty to a neglect or refusal to grant the writ in vacation time, and from this a discretionary power to refuse it in term time was inferred, but our act of Assembly does not limit the penalty to a refusal in vacation, but is sufficiently comprehensive to embrace neglect or refusal in vacation or in term time.

I have looked in vain through the numerous cases reported in this State, to find that the writ was ever denied to one whose application was in due form, and whose case was within the purview of the act of Assembly.

In Respublica vs. Arnold, 3 Yates, 263, the writ was refused because the Petitioner was not restrained of his liberty, and therefore not within the terms of the statute; and in ex parte Lawrence, 5th Binney, 304, it was held that the act of Assembly did not oblige the Court to grant a habeas corpus, where the case had already been heard upon the same evidence by another Court. Without going into an examination of the numerous cases where the writ has been allowed, I believe it can be safely affirmed that the denial of the writ in a case like the present is

without a precedent, and contrary to the uniform practice of the bench, and against the universal understanding of the profession and the people; but what is worse still, it appears to me to be in direct violation of the law itself.

It may be said that the law never requires a useless thing to be done. Grant it. But how can it be determined to be useless until the case is heard? Whether there is ground for the writ is to be determined according to law, and the law requires that the determination should follow, not precede the return.

An application was made to the Chief Justice of this Court for a writ of habeas corpus previous to the application now being considered. The writ was refused, and it was stated in the Opinion that the counsel for the Petitioner waived the right to the writ, or did not desire it to be issued if the Chief Justice should be of the opinion that there was not sufficient cause set forth in the petition for the prisoner's discharge. But this can in no wise prejudice the Petitioner's right to the writ which he now demands. Even had the writ been awarded and the case heard, and the discharge refused, it would not be within the decision in ex parte Lawrence, for there the hearing was before a Court in term time, upon a full examination of the case upon evidence adduced, and not at chambers; but the more obvious distinction here is, that the writ has never been awarded. And the agreement of counsel that it should not be in a certain event, even if binding upon the client there, would not affect him here.

Now, whilst I aver that the writ of habeas corpus, *ad sub jiciendum*, is a writ of right, I do not wish to be understood that it should issue, as matter of course. Undoubtedly the petition must be in due form, and it must show upon its face that the Petitioner is entitled to relief. It may be refused if, upon the application itself, it appears that, if admitted to be true, the applicant is not entitled to relief; but where, as in the case before us, the petition alleges an illegal restraint of the Petitioner's liberty, under an order from a Judge beyond his jurisdiction, we are bound in the first place to take the allegation as true; and so taking it, a probable cause is made out, and there is no longer a discretionary power to refuse the writ. Whether the allegation of want of jurisdiction is true or not, is determinable only upon the return of the writ.

If one has averred in his petition what, if true, would afford him relief, it is his constitutional right to be present when the truth of his allegations is inquired into; and it is also his undoubted right, under our habeas corpus act, to establish his allegations by evidence, to be in-

troduced and heard upon the return of the writ. To deny him the writ, is virtually to condemn him unheard; and as I can see nothing in this case which requires at our hands an extraordinary resistance against the prayer of the Petitioner to be permitted to show that his imprisonment is illegal, that he is deprived of his liberty without due course of law, I am in favor of treating him as like cases have uniformly been treated in this Commonwealth, by awarding the writ of habeas corpus, and reserving the inquiry as to his right to be discharged until the return of the writ; but as a majority of my brethren have come to a different conclusion, we must inquire next into the right of the applicant to be discharged as the case is now presented.

I suppose it to be undoubted law that, in a case where a Court acting beyond its jurisdiction has committed a person to prison, the prisoner, under our habeas corpus act, is entitled to his discharge, and that it makes no difference whether the Court thus transcending its jurisdiction assumes to act as a Court of the Union or of the Commonwealth. If a principle, apparently so just and clear, needs for its support adjudicated cases, reference can be had to Wise vs. Withers, 3d Cranch, 331; 1st Peters' Condensed Reports, 552; Rose vs. Hinely, 4th Cranch, 241, 268; Don vs. Harden, 1st Paine's Reports, 55, 58 and 59; 3d Cranch, 448; Bollman vs. Swartwout, 4th Cranch, 75; Kearney's case, 7th Wheaton, 38; Kemp vs. Kennedy, 1st Peters' C. C. R. 36; Wickes vs. Caulk, 5 Har. and J., 42; Griffith vs. Frazier, 8 Cranch, 9; Com. vs. Smith, Sup. Ct. Penn., 1st Wharton's Digest, 321; Com. ex. relatione Lockington vs. the Jailor, &c., Sup. Ct. manuscript, 1814, Wharton's Digest, vol. 1st, 321; Albec vs. Ward, 8 Mass. 86.

Some of these cases decide that the act of a Court without jurisdiction, is void; some, that the proper remedy for an imprisonment by a Court having no jurisdiction, is the writ of habeas corpus; and others, that it may issue from a State Court to discharge a prisoner committed under process from a Federal Court, if it clearly appear that the Federal Court had no jurisdiction of the case; altogether they establish the point that the Petitioner is entitled to relief, if he is restrained of his liberty by a Court acting beyond its jurisdiction.

Neither do I concieve it to be correct to say that the applicant cannot now question the jurisdiction of the Judge of the District Court, because he did not challenge it upon the hearing. There are many rights and privileges which a party to a judical controversy may lose if not claimed in due time, but not so the question of Jurisdiction; this cannot be given by express consent, much less with acquiescence for a time waive an objection to it. (See U. S. Digest, vol. 1st, p. 639, Pl. 62, and cases

there cited.) It would be a harsh rule to apply to one who is in prison, "without bail or mainprise," that his omission to speak upon the first opportunity, forever closed his mouth from denying the power of the Court to deprive him of his liberty. I deny that the law is a trap for the feet of the unwary. Where personal liberty is concerned, it is a shield for the protection of the citizen, and it will answer his call even if made after the prison door is closed upon him.

If, then, the want of jurisdiction is fatal, and the inquiry as to its existence is still open, the only question that remains to be considered is this. Had the Judge of the District Court for the Eastern District of the United States, power to issue the writ of habeas corpus, directed to Passmore Williamson, upon the petition of John H. Wheeler. The power of that Court to commit for a contempt is not denied, and I understand it to be conceded as a general rule by the Petitioner's counsel that one Court will not re-examine commitment for contempt by another Court of competent jurisdiction, but if the Court has no authority to issue the writ, the respondent was not bound to answer it, and his neglect or refusal to do so would not authorise his punishment for contempt.

The first position which I shall take in considering the question of jurisdiction, is that the Courts of the United States have no power to award the writ of habeas corpus, except such as is given to them by the acts of Congress.

"Courts which orginate in the common law possess a jurisdiction which must be regulated by the common law; but the Courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend their jurisdiction. The power to award the writ by any of the Courts of the United States must be given by written law." Ex parte Swartwout, 4th Cranch, 75. Ex parte Barry, 2 Howard, 65. The power of the Courts of the United States to issue writs of habeas corpus is derived either from the 14th section of the Act of 24th September, 1789, or from the 7th section of the Act of March 2d, 1833.

The section from the Act of 1789 provides that "all the Courts of the United States may issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And either of the Justices of the Supreme Court, as well as the Judges of the District Courts, may grant writs of habeas corpus for the purpose of inquiry into the cause of commitment; but writs of habeas corpus shall in no case extend to prisoners in jail, unless they are in custody under or by color of the authority of the

United States, or are committed for trial before some Court of the same, or are necessary to be brought into Court to testify." The 7th section of the Act of 2d March, 1833, authorises "either of the Justices of the Supreme Court, or a Judge of any District Court of the United States, in addition to the authority already conferred by law, to grant writs of habeas corpus in all cases of a prisoner or prisoners in jail or confinement, where he or they shall be committed or confined on or by authority of law for any act done or omitted to be done in pursuance of a law of the United States, or any order, process, or decree of any Judge or Court thereof, anything in any Act of Congress to the contrary notwithstanding."

Now unless the writ of habeas corpus issued by the Judge of the District Court was necessary for the exercise of the jurisdiction of the said Court, or was to inquire into a commitment under, or by color of the authority of the United States, or to relieve some one imprisoned for an act done, or omitted to be done, in pursuance of a law of the United States, the District Court had no power to issue it, and a commitment for contempt in refusing to answer it, is an illegal imprisonment, which, under our habeas corpus act, we are imperatively required to set aside.

It cannot be pretended that the writ was either asked for or granted to inquire into any commitment made under, or by color of the authority of the United States, or to relieve from imprisonment for an act done or omitted to be done in pursuance of a law of the United States, and, therefore, we may confine our inquiry solely to the question whether it was necessary for the exercise of any jurisdiction given to the District Court of the United States for the Eastern District of Pennsylvania.

This brings us to the question of the jurisdiction of the Courts of the United States, and more particularly that of the District Court. And here, without desiring or intending to discuss at large the nature and powers of the Federal Government, it is proper to repeat what has been so often said, and what has never been denied, that it is a government of enumerated powers delegated to it by the several States, or the people thereof, without capacity to enlarge or extend the powers so delegated and enumerated, and that its Courts of Justice are Courts of limited jurisdiction, deriving their authority from the Constitution of the United States, and the acts of Congress under the Constitution. Let us see what judicial power was given by the people to the Federal Government, for that alone can be rightly exercised by its Courts.

"The judicial power," (says the second section of the third article) "shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall

be made under their authority, to all cases affecting ambassadors, other public ministers and consuls, to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party, to controversies between two or more States, between a State and a citizen of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign States, citizens or subjects."

The amendments subsequently made to this article have no bearing upon the question under consideration, nor is it necessary to examine the various acts of Congress conferring jurisdiction upon the Courts of the United States, for no act of Congress can be found extending the jurisdiction beyond what is given by the Constitution, so far as relates to the question we are now considering. And if such an act should be passed, it would be in direct conflict with the 10th amended article of the Constitution, which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

If this case can be brought within the judicial power of the Courts of United States, it must be either

1st, Because it arises under the Constitution or the laws of the United States.

Or, 2d, Because it is a controversy between citizens of different States, for it is very plain that there is no other clause in the Constitution which, by the most latitudinarian construction, could be made to include it.

Did it arise under the Constitution or the laws of the United States? In order to give a satisfactory answer to this question, it is necessary to see what the case was.

If we confine ourselves strictly to the record from the District Court, we learn from it that on the 18th day of July last, John H. Wheeler presented his petition to the Hon. John K. Kane, Judge of the District Court for the Eastern District of Pennsylvania, setting forth that he was the owner of three persons held to service or labor, by the laws of the State of Virginia, said persons being respectively named Jane, aged about thirty-five years; Daniel, aged about twelve years, and Isaiah, aged about seven years; persons of color; and that they were detained from his possession by Passmore Williamson, but not for any criminal or supposed criminal matter. In accordance with the prayer of the petition, a writ of habeas corpus was awarded, commanding Passmore Williamson to bring the bodies of the said Jane, Daniel and Isaiah, before the Judge of the District Court forthwith. To this writ Passmore

Williamson made a return, verified by his affirmation, that the said Jane, Daniel and Isaiah, nor either of them, were at the time of the issuing of the writ, nor at the time of the return, nor at any other time, in the custody, power or possession of, nor confined, nor restrained their liberty by him; and that, therefore, he could not produce the bodies as he was commanded.

This return was made on the 20th day of July, A. D. 1855. "Whereupon, afterwards, to wit: on the 27th day of July, A. D. 1855, (says the record,) the counsel for the several parties having been heard, and the said return having been duly considered, it is ordered and adjudged by the Court, that the said Passmore Williamson be committed to the custody of the Marshal, without bail or mainprize, as for a contempt in refusing to make return to the writ of habeas corpus, heretofore issued against him, at the instance of Mr. John H. Wheeler."

Such is the record. Now whilst I am willing to admit that the want of jurisdiction should be made clear, I deny that in a case under our habeas corpus act the party averring want of jurisdiction cannot go behind the record to establish its non-existence. Jurisdiction, or the absence thereof, is a mixed question of law and fact. It is the province of fact to ascertain what the case is, and of law to determine whether the jurisdiction attaches to the case so ascertained. And says the 2d section of our act of 1785, "and that the said judge or justice may, according to the intent and meaning of this act, be enabled by investigating the truth of the circumstances of the case, to determine whether, according to law, the said prisoner ought to be bailed, remanded or discharged, the return may, before or after it is filed, by leave of the said judge or justice, be amended, and also suggestions made against it, so that thereby material facts may be ascertained."

This provision applies to cases of commitment or detainer for any criminal or supposed criminal matter, but the 14th section, which applies to cases of restraint of liberty "under any color or pretence whatsoever," provides that "the court, judge or justice, before whom the party so confined or restrained shall be brought, shall, after the return made proceed in the same manner as is hereinbefore prescribed to examine into the facts relating to the case, and into the cause of such confinement or restraint, aud thereupon either bail, remand, or discharge the party so brought, as to justice shall appertain."

The right and duty of the Supreme Court of a State to protect a citizen thereof from imprisonment by a Judge of a United States Court having no jurisdiction over the cause of complaint, is so manifest and so essentially necessary under our dual system of government, that I cannot

believe that this right will ever be abandoned or the duty avoided: but, if we concede, what appears to be the law of the later cases in the Federal Courts, that the jurisdiction need not appear affirmatively, and add to it that the want of jurisdiction shall not be proved by evidence outside of the record, we do virtually deny to the people of the State the right to question the validity of an order by a Federal Judge consigning them to the walls of a prison "without bail or mainprize."

What mockery to say to one restrained of his liberty, "True, if the Judge or Court under whose order you are in prison, acted without jurisdiction, you are entitled to be discharged, but the burthen is upon you to show that there was no jurisdiction, and in showing this we will not permit you to go beyond the record made up by the party against whom you complain."

As the Petitioner would be legally entitled, upon the return of the writ, to establish the truth of the facts set forth in his petition, so far as they bear upon the question of jurisdiction, we are bound, before the return, to assume that the facts are true as stated, and so taking them, the case is this:

John H. Wheeler voluntarily brought into the State of Pennsylvania three persons of color, held by him, in the State of Virginia, as slaves, with the intention of passing through this State. Whilst on board of a steamboat, near Walnut street wharf, in the city of Philadelphia, the Petitioner, Passmore Williamson, informed the mother that she was free by the laws of Pennsylvania, who, in the language of the petition, "expressed her desire to have her freedom, and finally, with her children, left the boat of her own free will and accord, and without coercion or compulsion of any kind; and having seen her in possession of her liberty with her children, your Petitioner (says the petition) returned to his place of business, and has never since seen the said Jane, Daniel and Isaiah, or either of them, nor does he know where they are, nor has he had any connection of any kind with the subject."

One owning slaves in a slave State voluntarily brings them into a free State with the intention of passing through the free State. Whilst there, upon being told that they are free, the slaves leave their master. Can a Judge of the District Court of the United States compel their restoration through the medium of habeas corpus directed to the person by whom they were informed of their freedom? Or, in other words, is it a case arising under the Constitution of the United States?

What article or section of the Constitution has any bearing upon the right of a master to pass through a free State with his slave or slaves? Or, when has Congress ever attempted to legislate upon this question?

I most unhesitatingly aver that neither in the Constitution of the United States nor in the acts of Congress can there be found a sentence which has any effect upon this question whatever. It is a question to be decided by the laws of the State where the person is for the time being, and that law must be determined by the Judges of the State, who have sworn to support the Constitution of the State as well as that of the United States—an oath which is never taken by a Federal Judge.

Upon this question of jurisdiction it is wholly immaterial whether by the law of Pennsylvania a slaveholder has or has not the right of passing through our State with his slaves. If he has the right, it is not in virtue of the Constitution or laws of the United States, but by the law of the State, and if no such right exists, it is because the State law has forbidden it, or has failed to recognise it. It is for the State alone to legislate upon this subject, and there is no power on earth to call her to an account for her acts of omission or commission in this behalf.

If this case could, by any reasonable construction, be brought within the terms of the third clause of the second section of Article Four of the Constitution of the United States, jurisdiction might be claimed for the Federal Courts, as then it would be a case arising under the Constitution of the United States, although I believe the writ of habeas corpus is no part of the machinery designed by Congress for the rendition of fugitives from labor.

"No person (says the clause above mentioned) held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." By reference to the debates in the Convention it will be seen that this clause was inserted at the request of delegates from Southern States, and upon the declaration that in the absence of a constitutional provision the right of reclamation would not exist, unless given by State authority. If it had been intended to cover the right of transit, words would have been used evidencing such intention. Happily, there is no contrariety in the construction which has been placed upon this clause of the Constitution. No Judge has ever so manifestly disregarded its plain and unequivocal language as to hold that it applies to a slave voluntarily brought into a free State by his master. Upon the contrary, there is abundant authority that such a case is not within either the letter or the spirit of the constitutional provision for the rendition of fugitives from labor. Mr. Justice Washington, in ex parte Simmons, 6 W. C. C. Reports, 396, said:

"The slave in this case having been voluntarily brought by his master

into this State, I have no cognizance of the case, so far as respects this application, and the master must abide by the laws of this State, so far as they may affect his right. If the man claimed as a slave be not entitled to his freedom under the laws of this State, the master must pursue such remedy for his recovery as the laws of the State have provided for him."

In Jones vs. Vanzandt, 5 Howard, 229, Mr. Justice Woodbury uses language equally expressive: "But the power of national law (said that eminent jurist) to pursue and regain most kinds of property in the limits of a foreign government is rather an act of comity than strict right, and hence as property in persons might not thus be recognised in some of the States in the Union, and its reclamation not be allowed through either courtesy or right, this clause was undoubtedly introduced into the Constitution as one of its compromises for the safety of that portion of the Union which did permit such property, and which otherwise might often be deprived of it entirely by its merely crossing the line of an adjoining State; this was thought to be too harsh a doctrine in respect to any title to property of a friendly neighbor, not brought nor placed in another State under State laws by the owner himself, but escaping there against his consent, and often forthwith pursued in order to be reclaimed."

Other authorities might be quoted to the same effect, but it is unnecessary, for if it be not clear that one voluntarily brought into a State is not a fugitive, no judicial language can ever make it so. Will we then, for the sake of sustaining this jurisdiction, presume that these slaves of Mr. Wheeler escaped from Virginia into Pennsylvania, when no such allegation was made in his petition; when it is expressly stated in the petition of Mr. Williamson, verified by his affirmation, that they were brought here voluntarily by their master; and when this fact is virtually conceded by the Judge of the District Court in his Opinion? Great as is my respect for the judicial authority of the Federal Government, I cannot consent to stultify myself in order to sustain their unauthorised judgments, and more particularly where, as in the case before us, it would be at the expense of the liberty of a citizen of this Commonwealth.

The only remaining ground upon which this jurisdiction can be claimed, is that it was in a controversy between citizens of different States, and I shall dismiss this branch of the case simply by affirming, first, that the proceeding by habeas corpus is, in no legal sense, a controversy between private parties; and 2d, if it were, to the Circuit Court alone is given this jurisdiction. For the correctness of the first position I refer to the opinion of Mr. Justice Baldwin, in Holmes vs. Jennifer, published

in the appendix to 14 Peters, and to that of Judge Betts, of the Circuit Court of New York, in Barry vs. Mercein et al., reported in 5th Howard, 103. And for the second, to the 11th section of the Judiciary Act, passed on the 24th of September, 1789.

My view of this case had been committed to writing before I had seen or heard the opinion of the majority of the Court. Having heard it hastily read but once, I may mistake its purport, but if I do not, it places the refusal of the habeas corpus mainly upon the ground that the conviction for contempt was a separate proceeding, and that, as the District Court had jurisdiction to punish for contempts, we have no power to review its decision. Or, as it appears from the record that the prisoner is in custody upon a conviction for contempt, we are powerless to grant him relief.

Notwithstanding the numerous cases that are cited to sustain this position, it appears to me to be as novel as it is dangerous. Every court of justice in this country has, in some degree, the power to commit for contempt. Can it be possible that a citizen once committed for contempt is beyond the hope of relief, even although the record shows that the alleged contempt was not within the power of the Court to punish summarily? Suppose that the Judge of the District Court should send to prison an editor of a newspaper for a contempt of his Court in commenting upon his decision in this very case; would the prisoner be beyond the reach of our writ of habeas corpus? If he would, our boasted security of personal liberty is in truth an idle boast, and our constitutional guaranties and writs of right are as ropes of sand. But in the name of the law, I aver that no such power exists with any Court or Judge, State or Federal, and if it is attempted to be exercised, there are modes of relief, full and ample, for the exigency of the occasion.

I have not had either time or opportunity to examine all of the cases cited, but, as far as I have examined them, they decide this and nothing more—that where a Court of competent jurisdiction convicts one of a contempt, another Court, without appellate power, will not re-examine the case to determine whether a contempt was really committed or not. The history of punishments for contempts of Court, and the legislative action thereon, both in our State and Union, in an unmistakeable manner teaches, first, the liability of this power to be abused; and second, the promptness with which its unguarded use has been followed by legislative restrictions. It is no longer an undefined, unlimited power of a star chamber character, to be used for the oppression of the citizen at the mere caprice of the Judge, or Court, but it has its boundaries so dis-

tinctly defined that there is no mistaking the extent to which our tribunals of law may go in punishing for this offence.

In the words of the act of Congress of 3d March, 1831, "The power of the several Courts of the United States to issue attachments and inflict summary punishment for contempts of Court, shall not be construed toe xtend to any cases except the misbehaviour of any person or persons in the presence of said Courts, or so near thereto as to obstruct the administration of justice, the misbehaviour of any of the officers of the said Courts in their official transactions, and the disobedience or resistance by any officer of the said Courts, party, juror, witness or any other person or persons, to any *lawful* writ, process, order, rule, decree, or command of said Courts."

Now Passmore Williamson was convicted of a contempt for disobeying a writ of habeas corpus commanding him to produce before the District Court certain persons claimed by Mr. Wheeler as slaves. Was it a lawful writ? Clearly not, if the Court had no jurisdiction to issue it; and that it had not, I think is very plain. If it was unlawful, the person to whom it was directed was not bound to obey it; and, in the very words of the statute, the power for contempt "shall not be construed to extend to it."

But, says the opinion of the majority, he was convicted of a contempt of Court, and we will not look into the record to see how the contempt was committed. I answer this by asserting that you cannot see the conviction without seeing the cause, for it is a part of the same record which consists, 1st, of the petition; 2d, the writ and alias writ of habeas corpus; 3d, the return, and 4th, the judgment. "It is ordered and adjudged by the Court that the said Passmore Williamson be committed to the custody of the Marshal without bail or mainprize, as for a contempt in refusing to make return to the writ of habeas corpus heretofore issued against him at the instance of Mr. John H. Wheeler." As I understand the opinion of a majority of my brethren, as soon as we get to the word contempt the book must be closed, and it becomes instantly sealed as to the residue of the record. To sustain this commitment we must, it seems, first presume, in the very teeth of the admitted fact, that these were runaway slaves; and second, we must be careful to read only portions of the record, lest we should find that the prisoner was committed for refusing to obey an unlawful writ.

I cannot forbear the expression of the opinion that the rule laid down in this case, by the majority, is fraught with great danger to the most cherished rights of the citizens of the State. Whilst in contests involving the right of property merely, I presume we may still treat the judg-

ments of the United States Courts in cases not within their jurisdiction, as nullities, yet, if a single Judge thinks proper to determine that one of our citizens has been guilty of contempt, even if such determination had its foundation in a case upon which the Judge had no power to pronounce judgment, and was most manifestly in direct violation of the solemn act of the very legislative authority that created the Court over which the Judge presides, it seems that such determination is to have all the force and effect of a judgment pronounced by a Court of competent jurisdiction, acting within the admitted sphere of its constitutional power. Nay, more. We confess ourselves powerless to protect our citizens from the aggressions of a Court, as foreign from our State government in matters not committed to its jurisdiction as the Court of Queen's Bench, in England, and this upon the authority of decisions pronounced in cases not at all analogous to the one now under consideration. I believe this to be the first recorded case where the Supreme Court of a State has refused the prayer of a citizen for the writ of habeas corpus, to inquire into the legality of an imprisonment by a Judge of a Federal Court for contempt, in refusing obedience to a writ void for want of jurisdiction.

I will conclude by recapitulating the grounds upon which I think this writ should be awarded.

1st. At common law, and by our statute of 1785, the writ of habeas corpus *ad subjiciendum* is a writ of right demandable whenever a petition in due form asserts what, if true, would entitle the party to relief.

2d. That an allegation in a petition that the Petitioner is restrained of his liberty by an order of a Judge or Court without jurisdiction, shows such probable cause as to leave it no longer discretionary with the Court or Judge to whom application is made, whether the writ shall or shall not issue.

3d. That where a person is imprisoned by an order of a Judge of the District Court of the United States, for refusing to answer a writ of habeas corpus, he is entitled to be discharged from such imprisonment, if the judge of the District Court had no authority to issue the writ.

4th. That the power to issue writs of habeas corpus by the judges of the Federal Courts is a mere auxiliary power, and that no such writ can be issued by such judges where the cause of complaint intended to be remedied by it is beyond their jurisdiction.

5th. That the Courts of the Federal Government are Courts of limited jurisdiction, derived from the Constitution of the United States, and the acts of Congress under the Constitution, and that, where the jurisdiction

is not given by the Constitution, or by Congress in pursuance of the Constitution, it does not exist.

6th. That when it does not appear by the record, that the Court had jurisdiction in a proceeding under our habeas corpus act to relieve from an illegal imprisonment, want of jurisdiction may be shown by proving the facts of the case.

7th. That where the inquiry as to the jurisdiction of a Court arises upon a rule for a habeas corpus, all the facts set forth in the petition tending to show the want of jurisdiction are to be considered as true, unless they contradict the record.

8th. That when the owner of a slave voluntarily brings his slave from a slave to a free State, without any intention of remaining therein, the right of the slave to his freedom depends upon the law of the State into which he is thus brought.

9th. That if a slave so brought into a free State escapes from the custody of his master while in said State, the right of the master to reclaim him is not a question arising under the Constitution of the United States or the laws thereof, and therefore a Judge of the United States cannot issue a writ of habeas corpus directed to one who, it is alleged, withholds the possession of the slave from the master, commanding him to produce the body of the slave before the said Judge.

10th. That the District Court of the United States for the Eastern District of Pennsylvania has no jurisdiction, because a controversy is between citizens of different States, and that a proceeding by habeas corpus is, in no legal sense, a controversy between private parties.

11th. That the power of the several courts of the United States to inflict summary punishment for contempt of Court in disobeying a writ of the Court, is expressly confined to cases of disobedience to lawful writs.

12th. That where it appears from the record that the conviction was for disobeying a writ of habeas corpus, which writ the Court had no jurisdiction to issue, the conviction is *coram non judice*, and void.

For these reasons I do most respectfully but most earnestly dissent from the judgment of the majority of my brethren, refusing the writ applied for.

On the 20th day of September, 1855, the following opinion of Justice Lowrie appeared in the Philadelphia newspapers as having been filed in Court.

OPINION OF JUSTICE LOWRIE.

After the argument of this motion for a habeas corpus, I wrote an opinion which I expected to deliver; but, on further consultation with my brethren, and fuller reflection on the subject, I became convinced that it was partly erroneous. This prevented me from delivering my views when the case was decided, and I do it now, avoiding as much as possible any unnecessary repetition of what has already been said by others.

I have not been able to doubt that this Court is, in many cases, bound to exercise its judgment as to the propriety of granting the writ before allowing it to issue. Notwithstanding the words of the act which impose a penalty for refusing the writ, we are not forbidden to interpret the law; and the necessity of presenting a petition to the Court or to a Judge thereof, of stating therein whether the prisoner was detained on criminal or on civil process, or neither, of producing the warrant of committal or accounting for not doing so, and the fact that traitors and murderers, and fugitives from the justice of other States, are excluded from the benefit of the act, and that the writ was not intended for the relief of convict criminals, (Cro. Car. 168. 1 Salk. 348,) and was not extended to them by our act; all these matters show plainly enough that the judge or Court is not exercising a mere ministerial function in granting the writ. On any other supposition, there is no reason at all for applying to the Court, for the prothonotary could grant it as well.

And no one can examine the provisions of magna charta, the petition of right, 3 Charles 1, the statute repealing the Starchamber Court, 16 Ch. 1, c. 10; the habeas corpus act of 31 Ch. 1, and ours of 1785, and the numerous kindred statutes to which that investigation will lead him, without perceiving that a free and open Court, and a full and open trial before the superior judges by due course of law, have always been regarded as the best guaranty of the liberty of the citizen. He will see, moreover, very plainly, that the habeas corpus is only a means by which this end is to be secured, so that no ignorance or tyranny of king, or king's council or minister, or of mere local and inferior Courts, dependent on and governed by local customs, or of justices of the peace, shall imprison a man without a chance of bail, or a hope of obtaining a speedy trial by the law of the land.

The habeas corpus was not intended, and could not be intended, to authorize the superior judges, being substantially those of the higher Courts of record, to interfere with the jurisdiction of each other. The

purpose of the writ was satisfied when the jurisdiction of the superior Courts attached, for the State could not know any better means of securing a fair and impartial trial. If that, with the ordinary provisions for the correction of errors, was not sufficient, then humanity has only to acknowledge its incapacity to provide entirely against error and injustice. Certainly the habeas corpus was not intended to provide a remedy against the unjust judgments or sentences of the higher Courts, and when it is asked for, for such a purpose, it ought to be refused; unless, possibly, when it is asked from a Court that may officially revise and correct the proceedings, 7 Pet. 572. Cro. Car. 175. 1 Mod. 119. 14 Queen's B. 566. 5 Com. B. 418. 1 B. & C. 655.

But even if our habeas corpus act of 1785 did mean to say that the writ shall always be granted when prayed for, it could not be obeyed so far as to conflict with the new order of things introduced in 1787 by the Constitution of the United States. Hence originated other and independent jurisdictions, with which our habeas corpus act was not intended to interfere, for when it was passed it could have no reference to them. How far it can be used in paralyzing those jurisdictions, or subjecting them to those of the States, is proper matter to be decided on the presentation of the petition, or on the return of the writ, as the Court may think proper. We saw such difficulties as led us to hear an argument from the Petitioner's counsel on the presentation of the petition, and still our difficulties have not been removed.

But I have a very strong impression, that no Court is justified in issuing a habeas corpus for the purpose of restoring a slave to his master; and that is very plainly the purpose for which the writ was issued out of the District Court. I do not think that our writ has any such purpose, or ever had. It was intended to secure the liberty of the subject, and not to try rights of property. It is sometimes used to obtain the custody of children; but then it proceeds upon the principle that children are restrained of their liberty who are in a custody that is disapproved of by their lawful guardians. Arrived at years of discretion, the writ is not used to retain them in an unwilling subjection. It is not usually allowed in order to recover the possession of an apprentice, as such; 5 East, 38; 6 Term R., 497; 7 Id., 741; 11 Mass., 63.

The common law of England, as it was when Pennsylvania was settled, could not have allowed a habeas corpus for the purpose of enforcing slavery, for it did not recognise such an institution. The common law remedy, for trying the title to a feudal villein, was the writ *de homine replegiando*, and that was the writ used by us in slave cases;

2 Dall., 56; 3 Binn., 101; 3 S. & R., 396; 7 Id., 299. And this application of the habeas corpus is, to my mind, seriously startling.

I have, moreover, a very strong impression that there is no way in which the case before the District Judge can be regarded that would entitle the Federal Judiciary to take cognizance of it; but I will not trouble any one with my reasons for this.

Regarding the matter thus, it seemed to me that there was real merit in the claim that the Petitioner should be discharged; and I did not see any very satisfactory reason in opposition to our hearing and deciding the case; and therefore I was willing to grant the writ and hear the other side. I was very strongly impressed by the argument that the District Judge exceeded his authority in entertaining the case; and that the Supreme Court of the State has power, on a habeas corpus, to discharge the prisoner; especially considering that this Court is one of general jurisdiction, and part of a government of general powers; whereas the District Court belongs to a government of limited powers, and necessarily partakes of the same character. But this proposition involves consequences so grave, in theory at least, and principles so essential to political order, that it ought not to be readily admitted.

We may first set aside the consideration that the Federal Courts are of limited jurisdiction; for even conceding that they are, it does not follow that we may review and restrain them in the exercise of it. To use this as a reason for treating their acts as void, when we think them unauthorized, is to apply an English reason to an American institution, without any resemblances sufficient to make the application legitimate. The English superior Courts might have had very good reasons for treating all the unauthorized acts of their inferior tribunals as void, in order to keep them within their proper limits. But we cannot so treat the United States Courts; for, in the English sense, they, too, are superior Courts, and especially they are not subordinate to us.

The proposition then remains that, whenever any of the public tribunals of the United States exceed the jurisdiction, which, under the Constitution, can be given to them, and, in doing so, a citizen is arrested or imprisoned, then our habeas corpus is a proper and effectual remedy.

If this is so, then certainly there are places where the Courts of the United States can have but little power for any purpose. Any man, arrested or imprisoned by warrant, or execution, or sentence from District, Circuit, or Supreme Court, or either House of Congress, may have relief from any friendly County Judge wielding the power of the habeas corpus. A Judge impeached, convicted and sentenced, a traitor tried and condemned, may still have hopes from the habeas corpus, if a Judge

can be found, ignorant, or insubordinate, or degraded enough to declare that his superiors acted without jurisdiction.

And since the force of the argument does not at all depend upon any peculiar virtue in the habeas corpus, but simply on the supposed want of jurisdiction in the federal tribunals, we may apply it to all cases. Then we may have summary replevins and ejectments, and prohibitions, and injunctions, and attachments to support them, heard and decided by single judges, or even commissioners or justices of the peace, everywhere and without review, for the purpose of testing the validity of the judgments of the United States tribunals, and the constitutionality of federal tax laws and tariffs, and the frustration of disagreeable laws, become perfectly simple and regular.

And if we should do this in any honest belief in its political rightness, we should, of course, be willing to have the same principle applied in reference to our own official system. Then habeas corpus would stand as a writ designed to set aside all official order, and to place single judges above the very tribunals of which they are members.

On one occasion the laws of the United States were attempted to be thus summarily set aside, and to prevent it the force bill, 2 Mar., 1833, s. 7, P. Laws, p. 51, declared that habeas corpus out of the U. S. Courts, shall relieve any person confined by any authority, for acts done in pursuance of any order or decree of a U. S. Court. This is not a strange way of protecting one court against the encroachments of another; 1 Rolle, 315, 2 Chit. G. Pr., 317, 1 Mad. Ch. Pr., 135. And it is certainly most effectual, for it would protect the Marshal in disobeying an order by us to discharge the prisoner; and thus, it very plainly forbids us to discharge him. If, in this law, there is any encroachment upon State rights, it is no more than might have been expected at the time, for the cause of freedom always suffers from the restrictions that become necessary, in order to suppress disorder, whether that disorder arises from mere vice or from an over-zealous urging of principles and institutions that are supposed to be good.

If it be meant that the Supreme Court has a peculiar authority to interfere in such cases, I have failed to discover whence it arises. The habeas corpus act makes no distinction between the different Courts and Judges who may exercise the powers given, and I do not see how we can make any, except that which is necessarily involved in the principle of subordination.

All the institutions of the same government, however complex, are intended to be in harmony with each other, and unitedly to aid in the preservation of order. It is therefore the duty of all public officers

to avoid, if possible, all conflict of functions in the execution of their offices, and to follow the principles that provide for this result. The most obvious of these is, that co-ordinate tribunals cannot interfere with each other, nor inferior with superior ones. Without this rule, government would be a mere mob of officials, wanting an essential element of unity, and would soon fall to pieces. Without this, the habeas corpus law would set aside all order, by allowing the lowest of all subordinate Judges to annul, on constitutional grounds, the judgments of every Court in the State, even the very highest; and such apparently gross insubordination would be a mere error in judgment, and not an impeachable offence.

The Supreme Court of the State is in no sense the official superior of any of the United States Courts, but co-ordinate with them all. We are not set as checks upon each other, and cannot directly review each other's decisions in any matter. Each of us occupies a different position in our compound system of government, and each of us must answer to our official or political superiors. This Court is not set to watch over the Federal Courts and suspect them of excess of jurisdiction; and we should be ourselves disorderly, if we should assume any control over them, set as co-ordinate tribunals upon an entirely separate foundation. No one will pretend that our writ of prohibition would be of any value there, and hence it is plain that we cannot interfere without disorder.

Like most other writs, habeas corpus must be more efficacious in the hands of a superior Court than of any subordinate one; for the law of order requires that those who are officially equal, shall not sit in review of each other's acts. The cases that illustrate this are very numerous, declaring that the superior Courts of law and equity cannot interfere with each other; that the regular Courts cannot interfere with the sentences for contempt and breach of privilege, by the Senate or House of Representatives, House of Lords, or House of Commons. Where the duty of final decision, and the whole control of any matter is given to one set of officers, the interference of others is mere usurpation. And here I may remark, that a sentence for contempt is not essentially different from any other judgment, decree or sentence. It is a matter adjudicated, and it belongs to the very essence of governmental order, that it cannot be reviewed except by the Court that pronounced it, or by its official superiors; and, therefore, in this instance, not by us.

It is insisted that this sentence, being in excess of authority, is void, and we are asked to declare it so. Without stopping to notice the habitual misapplication of this word, *void*, to all acts of public authority which are made the subject of an opposing criticism, I may say that

it is a plain solecism thus to qualify any act that is so efficient of results. A sentence, by which a man is committed to prison and held there, cannot be void. If we wish to treat the subject profitably, we must speak of it more accurately.

Is it meant to say that we must, on habeas corpus, inquire whether a Court legitimately established has rightly decided the question of its jurisdiction? Substantially this is the same objection that we have already considered. If it is well founded, then it applies to all sorts of cases; for the question of jurisdiction is involved in them all; every judgment rendered is an assertion of the jurisdiction of the Court that renders it. If the allegation of want of jurisdiction entitles us to review it, then there are but few cases in the Federal Courts that are beyond the interference of the State Courts, if a defendant desires to have it.

The superior Courts in England may treat as void the unauthorized acts of *their* inferiors, and be justified by the peculiarities of their system and the fact of their superiority; but they could not, with propriety, so treat each other. Their practice relative to each other never contained such an element of disorder. A party summoned to answer, is bound to obey, or give a good reason for not doing so. He cannot treat public authority with contempt. If he thinks that the Court lacks jurisdiction, a decent respect for public order requires him to appear and raise the question, so that it may be decided in an orderly way. He need not raise it in order to insure his right to the objection in a Court of error, but it may be necessary in order to stop the unauthorized process. Judges cannot keep all the law in their minds, and parties are heard in order that they may insist upon every principle that is in their favor. It would be very disorderly for defendants to hold back an objection to the jurisdiction of the Court, and then raise it by rebellion against the public authorities when the writ of the Commonwealth comes to be executed; and habeas corpus would be a most disorderly writ, if it could be thus used in contempt of authority.

Government consists of fallible men, who do not always know their duty; and parties may lose some of their rights, if they do not aid the public officers, by notifying them of their views, and urging them; and questions of jurisdiction are very often as difficult to decide as any other. It is an essential element of Government that it must be the judge of its own jurisdiction; and I do not know that this rule is peculiarly applicable to the higher Courts. The lowest must act upon it, subject to the higher social law that is involved in official subordination. Often the question may be erroneously decided. Often such

decisions may result in great injury to the citizen: but it is the lot of Government to err, because it is human, and a man of well-trained mind will think it no great hardship to submit to authority even in error. In the name of order, the country demands, and has a right to demand it.

It is usual to say, even of foreign judgments, that, if pronounced by a competent tribunal and carried into effect without our assistance, they are conclusive of the question decided. And here "competent tribunal" means one of the regularly established Courts of the country and in it. If its government could, according to the law of nations, have jurisdiction of such a case, we concede to the Court itself to decide upon its own jurisdiction; 4 Cranch, 276; 1 Rawle, 389; for we are not interested in the manner in which other States distribute their civil functions among their different departments.

Applying this principle here, our interference is certainly excluded. Not that the United States is a foreign country, but that its Courts belong to a different system from the State Courts, and thus these respective authorities are, as authorities, foreign to each other. Each must respond to its own superiors; neither can call the other officially to account. I speak not here of the action for damages for excess of authority. True enough, we do thus leave the Federal Government at liberty to make continual encroachments upon State rights, without being responsible therefor to any organized power; but this cannot be avoided. There can be no organized authority superior to government itself. However we may define its functions, itself must interpret them, subject only to the right of the people to give new instructions. It must be so with every government. Manufacture and repair constitutions and bills of rights as we may; multiply checks and restrictions upon official functions as we may, we cannot shut out human error and its consequences, which are sometimes distressing—while we may carry our suspicions of government so far as to take away its real efficiency, as a means of preserving social order; and then we shall reject it as totally worthless, and the circumstances of its rejection must give the form to its successor.

In civil matters there can be no moral principle of higher importance than the one that is most deeply involved in this case—the principle of social order. It is a principle of action that is as binding on the conscience as any other. It is the great moral principle of social man. Without it we must endanger and retard our social progress. Without it we confound all official subordination, and infect with disease the very organs of social life. This principle expresses itself, as best it can, in our civil institutions, and thus originating, they are morally entitled to

our respect and obedience, imperfect as we may suppose them to be. He that rejects this principle from his moral code, or gives it a low place there, can hardly be an orderly citizen; but must be dangerous to the public peace and progress, in proportion as he is otherwise intelligent, influential and active. If the Supreme Court, as the highest impersonation of the judicial order of the State, should set aside this principle, there can be no guaranty for the healthy administration of our social system. In the name of the order which we represent and enforce, I decline any and every usurpation of power or control over the United States Judiciary; it being a system, collateral to ours, as complete and efficient in its organization, and as legitimate and final an authority as any other. I concur in refusing the writ.

Afterwards to wit on the 17th of October, 1855, the following motion was made and affidavit presented to the Court.

U. S. ex rel. Wheeler vs. *Williamson.* } District Court U. S.

Oct. 17, 1855. E. HOPPER and C. GILPIN move the Court for leave to file of record in this case an affidavit of respondent.

COPY OF AFFIDAVIT.

United States ex rel. John H. Wheeler vs. *Williamson.* } In the D. C. of the U. States for the E. D. of Pa. Habeas Corpus.

Passmore Williamson being duly affirmed, saith, that on the eighteenth day of July last past, at or about five o'clock in the afternoon, the said Jane, Daniel and Isaiah in the writ mentioned, left Dock Street, in a carriage, but affirmant did not then know in whose company, nor has he any knowledge now of the persons who accompanied them, other than from newspaper publications. That since the said time when the said Jane, Daniel and Isaiah left Dock Street in a carriage as aforesaid, this affirmant has not seen them or either of them; nor has he communicated or corresponded with them or either of them directly or indirectly; nor has he had the custody or possession of, or had or exercised any power or control over them or either of them directly or indirectly; nor has he confined or restrained them or either of them of their liberty directly or indirectly; nor has he known that any person has had the custody, power over or possession of them or of either of them, or confined or re-

strained them or either of them of their liberty; nor has he had any knowledge of what became of them after the time before stated, other than from the newspapers and statements therein read by him, or reported orally to him. This affirmant further saith that the facts stated are just and true to the best of his knowledge, recollection, information and belief, and further this affirmant knoweth not and saith not.

P. WILLIAMSON.

Affirmed and subscribed before me the 16th day of October, A. D. 1855. CHAS. F. HEAZLITT,
U. S. Commissioner.

Judge KANE said: "It seems to us that this should come in the form of a petition; but we will grant a rule to show cause why the affidavit should not be read and filed."

Mr. GILPIN. After the intimation from the Court as to the form the application should take, counsel do not desire a rule to show cause, but ask the Court to act on the motion as presented.

The Court did not act on the motion, but virtually and substantially refused it, by turning to the Court officer and directing him to call the Jury in another case.

On the 22d of Oct. 1855, the following motion was made and petition presented to Judge Kane.

U. S. ex rel. Wheeler vs. *Williamson.* } Dist. Court, U. S. E. D. Pa.

Oct. 22d 1855. E. HOPPER, C. GILPIN and MEREDITH move the Court for leave to present and file of record in the case a petition of the respondent.

COPY OF PETITION.

U. S. ex rel. Wheeler vs. *Williamson.* } District Court, U. S. East District of Pa. Habeas Corpus.

The petition of Passmore Williamson respectfully represents, that on the eighteenth day of July last past, at or about five o'clock in the afternoon, the said Jane, Daniel and Isaiah in the writ mentioned, left Dock Street in a carriage, but the Petitioner did not then know in whose company, nor has he any knowledge now of the persons who accompanied them, other than from newspaper publications. That since the said time when the said Jane, Daniel and Isaiah left Dock Street in a carriage as afore-

said, the Petitioner has not seen them or either of them; nor has he communicated or corresponded with them or either of them directly or indirectly; nor has he had the custody and possession of or had or exercised any power or control over them or either of them directly or indirectly; nor has he confined or restrained them or either of them of their liberty directly or indirectly; nor has he known that any person has had the custody, power over or possession of them or of either of them, or confined or restrained them or either of them of their liberty; nor has he had any knowledge of what became of them after the time before stated, other than from the newspapers and statements therein read by him or reported orally to him; and further the Petitioner knoweth not.

That the Petitioner has been imprisoned in Moyamensing Prison under an order of this Honorable Court, as for a contempt, in this case, since the twenty seventh day of July last past; and while he respectfully protests against the proceedings of the Court in the premises, and against the jurisdiction of the Court in the case, or of the subject matter thereof, he prays to be discharged from the further custody of the marshal.

P. WILLIAMSON.

Eastern District of Pennsylvania.

Passmore Williamson being duly affirmed says that the facts stated in the foregoing petition are just and true to the best of his knowledge, recollection, information and belief.

P. WILLIAMSON.

Affirmed and subscribed before me the 19th day of October A. D. 1855.

CHAS. F. HEAZLITT.
U. S. Commissioner.

On the 26th of October, 1855, upon notice to J. A. VANDYKE, Esq., an argument was heard on the foregoing motion and petition.

DISTRICT COURT OF THE UNITED STATES.

In and for the Eastern District of Pennsylvania, October 26th, 1855.

JUDGE KANE PRESIDING.

The Crier opened Court at 10 o'clock, A. M.

Mr. HOPPER. If the Court please, I expect my colleague, Mr. MEREDITH, here in a moment.

In order to comply with strict form, we have made an application to

the Marshal for the bill of costs in the present case, which we are prepared to pay; and the Marshal has informed us that whatever the counsel for the Petitioner shall consider proper will be perfectly satisfactory to him.

Judge KANE. Does that connect itself in any way with the motion you propose making?

Mr. HOPPER. It may form part of the case, and we wish to conform strictly to the precedents.

Judge KANE. But that is not the question I wish to have argued. I do not wish to hear that.

(Judge KANE to Mr. GILPIN who had arrived at this moment.) I was about remarking to Mr. Hopper that it is not the right of petition that I request to have argued: I have no doubt on that subject at all. The question is, whether I can receive any communication from a party who is in contempt, which does not, primarily, seek to absolve him from the contempt. That is the simple question.

Mr. HOPPER. That is the petition which we moved, and we will present the specific paper which will bring up the matters upon which the Court desires to hear argument.

Judge KANE. I know nothing of the petition, but the simple question; but, (irrespective of the paper which I do not wish to see unless upon the announcement of counsel as to its tenor and effect,) I put myself in the position of a Court that cannot hear an application from a party in contempt, except to absolve himself from that contempt. That is the question.

Mr. HOPPER. I understand that to be the question, and it is for the counsel to narrow themselves to that point.

(Mr. MEREDITH arrives at this moment.)

Mr. GILPIN (to the Court.) Is your honor ready to proceed?

Judge KANE. I am ready Sir, but Mr. Meredith was not here when I last spoke.

I understand that there is an application, by petition to me, in the name of Passmore Williamson, and in his behalf, which petition is not an application to relieve himself from contempt.

Mr. MEREDITH. Well, Sir, I feel at a loss to assent to that proposition or to say what it is; because it is rather a delicate matter to put a construction on a petition before it is heard.

Judge KANE. I have a right to ask, as it seems to me, Mr. Meredith, that counsel, before presenting a petition, shall announce its import.

Mr. MEREDITH. Undoubtedly, Sir, and I did, the other day, announce its import, and the view which I take of the subject; and I think that

I am prepared to show that it is the kind of petition that you speak of.

Judge KANE. That it is a petition to relieve himself from the contempt, and submit himself to the Court?

Mr. MEREDITH. I conceive it to be of that import, but I understood your honor somewhat differently the other day.

Judge KANE. On the contrary. Let us not be misunderstood. I am sure that we misunderstand each other unintentionally, and with an anxious wish to understand each other.

Mr. MEREDITH. I am sure of that, Sir.

Judge KANE. I am prepared to receive an application from Passmore Williamson, the party in contempt of this Court, to relieve himself from the contempt by purgation. I am of opinion, until otherwise instructed, that that is the indispensable preliminary to any other application from him. If, therefore, the learned counsel rise before me to present an application from Mr. Williamson to admit him to purge his contempt, I have no difficulty, at all, in hearing the application. If the learned counsel do not inform me that they are here, from Mr. Williamson, with an application to purge the contempt, as at present advised, I have no power to hear their application, whatever it may be.

Mr. MEREDITH. I do not know Sir, how it is possible that you should make such a decision, as I am sure you would desire to make, upon an application like the present, without hearing the petition read, or reading it yourself. But, may it please the Court, I do consider, and I think and hope that I am prepared to show, according to the best precedents that I can find, that this is such an application, as in cases of similar contempt, as near as I can find such, have been received and are perfectly proper to be received. But, at the same time if you mean to put it whether there are the words that "he prays to be admitted to his purgation," they are not in his petition. I do not know how it is possible to get on, however, without your reading the petition or hearing it read, because the argument must apply itself to that petition.

Judge KANE. All I ask is this, if gentlemen, whom I respect so much as I do the one who addresses me, tell me that the object is to purge the contempt I will go on and hear the argument.

Mr. MEREDITH. I should like your honor to decide because upon this depends the character of the argument. I cannot undertake to affirm what it may be, or what it may not be, as there are, very possibly, differences of opinion, on the part of counsel, in relation to it.

Judge KANE. Is it intended to be a petition to purge the contempt?

Mr. MEREDITH. It is intended for the purpose of obtaining his relief

from imprisonment for contempt in a manner consistent, as I understand it, with the practice and precedents which we find in the books.

Judge KANE. Without a purgation?

Mr. MEREDITH. With, or without, it as you may think fit to order.

Mr. VAN DYKE, (who had been in Court during its morning's proceedings.) I understood that the learned counsel on the other side admitted that this was not a petition to come before the Court to purge from contempt. It is not for me to say what is in that petition, but my understanding of it is, that it is not a petition to purge from contempt; on the contrary,—that it is a direct protestation against the action of the Court, and, on the part of the Government I protest against any such paper being received.

Mr. MEREDITH. On the part of the Government?

Mr. VAN DYKE. Yes, sir.

Mr. MEREDITH. I had supposed that Mr. Van Dyke appeared as the Counsel for Mr. Wheeler, in this case.

Mr. VAN DYKE. I object to the reception of a paper, which will be an additional insult to the Court.

Mr. MEREDITH. May it please your honor, I am quite as incapable of presenting such a paper as is the learned gentleman who has objected to it.

Mr. VAN DYKE. My remark did not apply to Mr. Meredith at all.

Mr. MEREDITH. It ought not to have been put in this way. In regard to Mr. Van Dyke appearing for the Government, I respectfully ask your honor to prohibit his so doing.

If Mr. Van Dyke appears as the counsel for Mr. Wheeler, he is entitled to be heard; and it is the more evident from what he has said, that the ground on which I have asked your honor to receive the petition is a sound one, for he avowedly takes a different view of it from myself.

Now:—how are you to decide between us? When a member of the bar differs from me, I have no right to assume the correctness of my views in opposition to his. I, therefore, ask the Court to decide upon the paper and to allow us to be heard.

Mr. VAN DYKE. I do not understand my learned friend, in his capacity as a member of the bar, to say that this is an application from Passmore Williamson to allow him to purge his contempt. If he does, there will be an end to this preliminary question.

If he asserts, in his professional capacity, that this is a petition from Passmore Williamson for leave of this Court to purge his contempt,

that assertion must be taken. But neither at the last hearing, nor now, do I understand my learned friend to say that such is the case.

Mr. MEREDITH. I will not say what is the legal effect of the paper, particularly when I find there is a difference of opinion in regard to it. Your honor knows, very well, that the very question on which you invited an argument was:—whether this petition was such a one, as, in conformity to the practice governing such cases, would be received as a petition to purge from the contempt; and for me to come into Court, and, upon my bare assertion to say that it is so, I cannot do it. I find that Mr. Van Dyke thinks differently of it; and he has as good a right to his opinion as I have to mine. It is for the Court, therefore, to decide between us. I do not know that any harm can result, and if you please I can state, very briefly, its contents, as I did the other day.

Judge KANE. I beg the gentleman's pardon. There is no gentleman at the bar for whom I have a higher regard, or with whom I have been more agreeably associated under every circumstance.

Mr. MEREDITH. I am happy to know and feel it, sir.

Judge KANE. But the only question before me, is one absolutely of an entirely abstract character.

I have been under the impression, derived from the authorities of Lord Mansfield on the common law side, and Lord Eldon on the chancery side, that I cannot, in the present state of the relations of the Court towards Passmore Williamson, and his relations towards the Court, hear from him, as a Judge, except by an application to purge his contempt. The particular paper which was before the Court some days since, I have never seen a copy of, nor do I know its contents.

I understood the learned counsel, when presenting that paper some days ago, to speak of it, not as an application to purge a contempt, but, as a petition setting forth facts upon which the Court had, heretofore, been called to act, protesting against the jurisdiction which the Court had exercised, and asking, thereupon, to be discharged.

Taking that as the substance of the instrument, I was of the opinion that it was not such an instrument as the Court could receive at that time, and I invited counsel not to argue the question whether this particular paper had, or had not, one character or another, but, whether I could hear from a party in contempt, except upon an application to purge his contempt. That is the question that I desire to hear an argument upon.

I am perfectly satisfied that any paper which the respectable counsel will present to me, will be one appropriate for me to listen to. If I cannot properly listen to an application from Mr. Williamson, that is not

an application to purge from contempt, then my course is a simple one, viz: to refuse to hear a paper which does not propose to be offered to purge from the contempt. And I will intimate to the counsel why I suppose that rule to be proper to be observed in this case. Whether with sufficient reason, or otherwise, it is obvious that there has been feeling excited in regard to the action of this Court: feeling, almost necessarily, on the side of the party who has been the subject of the Court's action. The only protection that this Court can have, or any Court has, against renewed contempt, is the punishment, the action, the restraint, whatever you call it, which the Court has already exercised.

The action of the Court has been expended. If it be in the power of a party, still under contempt, to renew applications to the Court, what security can the Court have that there will not be accumulated contempts from the objects of the punishment, because the entire action of the Court has been expended upon the first. Such I understand to have been the argument which has influenced other Courts, and it was in the view of that argument, as well as of the present one, that I invited the counsel to argue before me the simple question: whether I can hear an application from Passmore Williamson, other than an application to purge his contempt. That is the question.

MR. MEREDITH. Well, Sir—it still comes down to this; because, as I understand it, there are two kinds of contempts, differing entirely in substance and character. One: a contempt consisting in personal disrespect of the Court; the other: in some disobedience or omission in regard to obeying the process of the Court.

The first kind is that with which this of Mr. Williamson's is not concerned.

I have not understood, so far as I have heard, that there was anything in his deportment before the Court disrespectful to the Court, or involving a punishment for a contempt of that kind.

The punishment of a contempt of that kind, as I understand it, is by a limited term of imprisonment, and this being not for a limited time shows, further, that this offence is not of that nature. It is the mere offence of not making a sufficient return, or rather (as the record shows) of refusing to make a return to a writ of habeas corpus.

Now, Sir, the nearest contempt that I can find, is the contempt of a party in a Court of Chancery who does not answer or appear, or, in some other particular, does not obey the process of the Court, as by violating an injunction; or, in any other way disobeying its process.

Now, Sir, I find that, in such cases, the form in which a party applies

is simply to show the Court that he is ready to comply with its requisitions.

In this case, to go back to the petition, as I understand it, (as it was only read over to me, and I bear in mind, particularly, its import on this point, and it was one to which my attention was turned) in this case I understand that the petition does not go back to the original transactions at all, further than to make a starting point, since which the Petitioner states that he has known nothing of these people, except what he has heard from public rumor and the newspapers, and that he has had no information about them up to the present time. It is submitted to satisfy your honor that it is not in the Petitioner's power to produce these people before the Court. Now, Sir, under these circumstances, I do find that the practice, as to contempts of this nature in the Courts of Chancery is this: Nine times out of ten an answer is filed without asking leave if the contempt be in not answering. It is held, however, that in strictness the answer ought not to be filed without leave of the Court, and that, therefore, the more rigorous mode of practice is, to apply to the Court for leave to put in the answer.

If the petition be presented, as I understand it, the party is entitled to his discharge on payment of costs. *Strictly* speaking he is to get leave, but, in *ordinary* practice, he presents his petition to the Court, saying that he has filed his answer, and that he is ready, or has tendered, to pay the costs, and *thereupon*, he is entitled to his discharge.

Now, Sir, this petition cannot be *precisely* in that form, but it combines both, and I think is fully within the principles of each. Instead of his undertaking to make a further return to the writ of habeas corpus, which it would not be wise for him to do, this petition corroborates his *statement* under oath on this subject, not going back to the origin of the affair, but taking it up from the time that he saw the woman in a carriage in Dock street, and bringing it down to the present time, overlapping the matters before only so far as is essential to show your honor the state of the case, and to connect the chain of events from that time to the present; and the essence of which I understand to be, that from that hour to the present it has been, and is, utterly out of his power to obey the mandate of the Court. Now, Sir, in addition to that, he tenders in Court here, the payment of the bill of costs, which the officers have been kind enough, I understand, to say shall be considered paid; (but he is ready to pay all the costs that may have accrued) and I am prepared to endeavor to show to your honor, respectfully, by precedents, that in this course we are clearly within the established rules of the Courts of Chancery, in which that species of contempt is most

common, and whose books therefore afford the greatest body of precedents. The petition does refer to another matter, and respectfully protests against the jurisdiction of this Court. I had no scruple in allowing the petition to pass with that protest; in the first place, because as that ground had been taken by him elsewhere, I considered it due in candor by him to present it here, and in the second place, because I have not the most remote conception of the belief that a respectful protest of that kind, which every party has a right to make, is going to affect your decision in his regard one iota.

I know very little of you, Sir, if I can suppose that that circumstance is going to affect you. I had, therefore, no scruple in allowing it. It is due to candor on his part. If the question of jurisdiction were open for argument, I would with cheerfulness present my views to you; but, that not being so, I will not urge it upon you at this time.

Now, sir, if you will allow me, I will go one step further in the practice. When everything has been done that can be done, as this petition shows in the present case, the order of the Court is, frequently, conditional, and a party is put, precisely, in the knowledge of what he has to do.

The order may be, for instance, that a party is to be discharged on filing his answer and paying costs; or, if the answer be already filed, that he be discharged on tender of the costs.

A conditional order of that kind, sir, if you will make it, is open for you to make when the petition has been carefully considered, if you will receive it; and if you should find that, in the body of the petition there is not sufficient ground to discharge the petitioner, it will be for you to enter upon the record that the party be discharged upon doing so and so, whatever it may be.

Now, sir, I do not find, (if you will pardon me for going a little further,) I have not been able to find, that upon a contempt, not consisting, or supposed to consist, in anything but a mere non-compliance with the process of the Court—I do not find, sir, that the Chancellor—I was going to say—allows, (but I will not say that, although I think it probable that he ought not to allow—but he does not call for) that sort of expression which is required where the contempt is of a different kind.

If Mr. Williamson had been guilty of personal disrespect to the Court, of course, there would be required a different mode of procedure. He would then have been committed for a limited time, and there would be an end of it, unless he did what ought to be done under the circumstances, and which I should be sorry to think that he would have any reluctance to do, if he had permitted himself to fall into the grave

error of personal disrespect to the Court. But where he is simply in custody for omitting to do something which he was directed to do, I can find nothing in the books which I am aware of, (and I trust that this argument will lead to some information to be derived from the Court,) but I do not find that form in the books or in the cases.

I do find in one case, where a party was in contempt for a direct breach of an injunction, and for doing, wilfully, the very thing that he had been ordered not to do; I do find, after he had lain for some time in contempt,—(long enough, as the Court supposed, to operate as a warning to him in the future,)—that he was discharged on mere motion, without petition, and that the Court of Exchequer had consulted with the highest authority before rendering their decision on the subject. This case is to be found in 6th Price, 321, and is one which I intended to present to your honor.

On the subject of interrogatories, I find that the party in contempt is ordered to come in and answer interrogatories, and is held bound by recognizance to do so, and then interrogatories are propounded to him. That is the uniform practice in cases proper for interrogatories, so far as I can find, in the English books. One or two cases, not in accordance with this practice, are to be found in Pennsylvania.

Now, I do not know whether, in this case, Passmore Williamson was subjected to interrogatories or not; but I understood that he was sworn upon the original hearing of the case.

JUDGE KANE.—At his own request.

MR. MEREDITH.—But whether considered as upon interrogatories or not, I do not know.

MR. GILPIN.—My recollection, may it please your Honor,—and I would like to state it here, so that we may agree upon that point,—I was in Court, and my recollection was this.

MR. MEREDITH.—Will Mr. Gilpin be so good as to defer his remarks for a short time.

MR. GILPIN.—My recollection is different, and if the Court will allow me, I will state it.

JUDGE KANE.—I do not know that it is necessary that the Court should have your recollection on the subject; it was merely in answer to a suggestion thrown out by Mr. Meredith, that I made the remark.

MR. GILPIN.—My recollection is different.

Mr. MEREDITH. I wanted to know if he were considered to be in course of purgation when he was examined.

Judge KANE. He was not. He proffered himself as a witness.

Mr. MEREDITH. Then I am to understand that he was not examined in purgation.

Now, sir, if this be a case in which you will put interrogatories to him, which you may do on receiving this petition, though I do not think that there is any ground for it, for I think that the statement is full and clear; but if you think that interrogatories should be filed, and that he should answer, you can make any order that the practice in such cases leads to.

I find in the English books, sir, so far as I have been able to trace, no trace that these interrogatories are voluntary on the part of the party in contempt. I do find, and I am bound to say so, in some of our books something of a different kind; I mean in the Pennsylvania books. But in the English books I find the principles laid down entirely different.

In the first place, upon the attachment, the Sheriff is allowed to take bail; and the condition of that recognizance is, that the party shall appear at a certain time and place and answer the interrogatories.

I find also, sir, in the English Courts of Common Law, cases in which a party has come in, being guilty of gross contempts, such as beating an officer of the Court, or using offensive or improper language to the Court, (in cases of gross contempts, not of the kind that I am upon now,)—I find, sir, there that a party coming into Court and offering to confess his guilt and submit to punishment, is not permitted to do so, until the interrogatories are filed and are put to him.

I find also, sir, that the rule, as laid down in Hawkins' Pleas of the Crown, is, that the interrogatories *must* be propounded to the party in contempt within four days after the attachment, or if he is under recognizance; and if not filed within those four days, so that he may come in and answer them, he is entitled to be discharged on that ground, whatever may have been the violent contempt of which he was guilty.

Now, sir, I do not mean to say, looking to the cause of commitment in this case, as set out upon your record, that this course is necessary to be pursued, because I am aware that in the class of cases that I speak of, it is a class of cases of a different kind to that which is upon the record. It is a class involving actual personal disrespect, something like a mutinous or contumacious disrespect of the Court; and not where the contempt consisted of a mere non-compliance with the mandate of the Court in its process.

Therefore I do not feel that I have a right to say, as the record stands, that, as the interrogatories have not been administered, the party is for that reason absolutely entitled to his immediate discharge.

At the same time, sir, I find that this interrogatory principle (viz: that interrogatories, where necessary at all, are to be propounded by the Court, and not petitioned for by the defendant) applies itself to this case, and that we have nothing to do with them unless—(as you have entire right to do, and which is done in Chancery)—unless you do find occasion, on the reception of the petition, to submit the party to interrogatories for the purpose of assuring yourself, by his further examination,—(which is final,)—of the correctness and bona fide truth of the statement. And if, upon hearing the petition, you should so decide, it would be an easy matter to make the order that he be heard upon interrogatories.

Will your honor allow me trespass upon your time one moment more in regard to the feeling which has arisen in this case?

Judge KANE. Certainly, sir.

Mr. MEREDITH. Which we all know to have been great, where it has prevailed, and which is, perhaps, widely extended.

I do not know, sir, that I should exactly agree with you in regard to the question in whose behalf that feeling has been most eminently exhibited; but I most certainly do heartily agree in the sincere deploring of the fact that there should have been in the proceedings of a Court of justice, or bearing upon the proceedings of a Court of justice, an occasion for any of this excitement out of doors; because I do not conceive that excitements of that kind, or of any sort, tend at all to promote the administration of justice.

I need not say, therefore, that I have looked with regret upon all the excitement outside of the Court-House; and I have regretted it, and could have wished that it could have been avoided; and I could have desired that whatever efforts may have been used to prevent it entirely might have been more successful.

I have the misfortune, on this occasion, as you know very well, to differ very materially from the views which have occurred to you, sir, and which, in the discharge of your duty, you have announced as the law in this case. That is a difference which, at the Bar and between the Bar and the Bench, we are accustomed to every day. But this is the arena (I will not say arena, sir, but this is the place) in which these differences are to be discussed, respectfully, by the Bar—in Courts of justice themselves, and not elsewhere,—and I should be sorry to see the day at which these discussions shall come to be held,—while a case is pending in a Court of justice,—anywhere but in the walls of a Court from which redress is sought; whether the Court in which the

proceedings originated, or any other Court, which the party may believe he is entitled to look to.

I know that I agree with you in this sentiment, and I have thus given a public expression to my views that my feelings may be known and understood.

Judge KANE. I would take occasion to say, that from the first, up to this moment, there has been on the part of the individual to whom the functions of a Court of justice have been delegated, and by whom they have been exercised in this matter, not one particle of conscious excitement. I do not believe that it would be in the power of the entire press of the United States, after I had honestly and, according to my best ability, administered justice, to give me a pang or produce an excited feeling. I therefore, now, as heretofore, look upon the question as a question that has no feeling on the bench.

If I understood an observation of Mr. Meredith, he meant to say to the Court that Passmore Williamson was desirous of testifying, now, his willingness to obey the exigency of the writ of habeas corpus. If so, he has a simple, straightforward, honorable course to pursue; it is: so to advise this Court by his petition to this Court. He has no need of making a narrative of facts, an argument or a protest. Now, as heretofore, let him come forward into Court, declaring that he is now willing to obey the writ which was issued from this Court, and he has done that which, in the estimation of the Judge, is a purgation of his contempt.

There has been nothing, on his part, of personal offence to the Judge, as his demeanor in Court, so far as was observed by the Judge, was entirely respectful. He has failed to obey the writ which the law issued to him, and when he is willing to obey that writ, it will become the duty of the Court to hear him. What is understood by a purgation is very simple. I need not explain it to the learned counsel. I suppose that it is, (whatever may be its form of words,—I am not jealous about words,—I care not what the form of words may be,—provided I receive from the party who is in contempt for having disobeyed the process of the Court,) the assurance that he is now prepared to obey it, and I will gladly receive it.

There is no form of words necessary; but, as it seems to me, while I should be very glad indeed to hear the arguments which the learned counsel have sketched, it seems to me that until he is prepared and so announces himself to obey the process of the Court, I cannot hear from him on any other subject. I cannot hear from him that the Court has erred either in point of fact, or in point of law; that the Court has ex-

ercised a jurisdiction which did not belong to it. The adjudication of the Court under which, up to the present moment, the party is in the custody of the Marshal, cannot be reviewed at his instance, from the fact that he is not in Court, and cannot come into Court except by means of that which the law calls a purgation, as it seems to me. I will hear the argument of counsel, if they be willing, upon this point.

Mr. MEREDITH. I wish your honor to understand clearly the point to which I refer. I have had myself, very little, or scarcely any, personal communication with Mr. Williamson. I have seen him but about three times since he has been in prison. I meant to speak of what was in the petition. I do not speak of his desires or willingness, beyond what is in the petition itself. It appears to me to be a real compliance with the exigency of the writ of habeas corpus, by satisfying your honor that it is impossible for him to obey it, otherwise than to return his inability to comply with its mandate.

Judge KANE. Then let him simply say that to the Court. Let him not combine it with other things. If he be prepared to submit to the jurisdiction of the Court and to obey its writ, let him merely say that, then he is reinstated. The words are simple; they are unequivocal; they admit of no argument; they can lead to no excitement;—the simple declaration.

Mr. MEREDITH. I really believe sir, that if you will allow me, privately as it were, to read this petition to you, or if you will take it and read it for yourself, that you will find that the statement of facts is, precisely to that point; that down to this time he is utterly unable, and has no knowledge of the whereabouts, or locality of these parties, except that which everybody else has from the newspapers and what is said out of doors, and that, of his own knowledge, he knows nothing about them.

Judge KANE. That, it seems to me, is the supplementary return; the answer upon interrogatories which follows the purgation.

Mr. MEREDITH. The purgation, as I understand it, if it be a case for interrogatories, is by the answer to the interrogatories.

Judge KANE. I do not so understand it. I understand that a party in contempt, in order that he may be heard in Court comes forward by purgation, and he submits himself to interrogatories touching all the matters which should have been embraced in his return. Mr. Williamson coming forward declaring to the Court that he has meant no disrespect, (and these are words of mere form, because we know that there was none,) but that he is now prepared to submit himself to the exigency of the writ, passes, at once, into the condition of an ordinary

suitor,—and the Court hears him. If he does thus comply with the exigency of the writ, he is discharged as a matter of course.

Mr. MEREDITH. There is exactly the point on which I have been unable to find anything which I should call direct authority; although I have been enabled to find some cases very much like this.

Judge KANE. I shall be very glad to hear Mr. Meredith upon that point.

Mr. MEREDITH. I find in Smith's Chancery Practice, which is a modern book, but which contains the practice of the Court very well—but if your honor intends to hear an argument, perhaps it will be better that Mr. Gilpin should go on.

Judge KANE. In whatever order you please.

Mr. GILPIN. May it please your honor.

Judge KANE. Let me just notice, first, the motion.

Mr. GILPIN. I will present it to your honor in the form which we thought appropriate.

U. S. ex rel. Wheeler vs. *Williamson.* } District Court, U. S., Eastern District of Pennsylvania, Oct. 22, 1855

HOPPER, C. GILPIN and MEREDITH, move the Court for leave to present and file of Record in the case, a Petition of the Respondent.

This is the form of the motion. The petition speaking for itself, it was not deemed necesary to say what was contained in it.

Judge KANE. That our notes may stand correct sir, I understand, simply, that the Court asks whether this petition is a petition to make purgation.

Mr. GILPIN. I can only answer by referring to the paper and the conversations which have taken place between yourself and the senior counsel. It is the paper which has been the subject of remark, and, perhaps I may say, conversation between him and the Court.

Judge KANE. So I understand. I simply wish our notes to stand regularly.

I ask the question whether it is a petition to make purgation; and I invite argument whether I can receive any other.

Mr. GILPIN. I will endeavor to define that petition; perhaps in not so clear and terse a manner as my learned colleague; but in a way to give the Court to understand that it is my intention to refer to this one *dry* point, if I may so call it, in the case, to show by reason and authority that there is ground for sustaining the present motion *modo et forma*.

Judge KANE. I ask the counsel, whether I can receive any applica-

tion from Mr. Williamson other than an application to purge himself of the contempt, and I desire counsel to confine themselves to that point.

Mr GILPIN. Your honor desires us to address ourselves to that point.

Judge KANE. To that question, yes, Sir.

Mr. GILPIN. May it please your honor.

After the very lucid exposition of the law of contempt of different classes, and the mode of being relieved from them, by my colleague, I shall feel myself very much relieved from making any general statements, or propositions, upon that head, and shall proceed as speedily, and as briefly, as possible to the statement of a few facts, connecting themselves, necessarily, with the law of the case, in order to make my remarks, directed to the particular point to which the Court calls our attention, more easily and better understood.

The substance of this application first assumed the shape of a motion, on the 17th of this month, for leave to file an affidavit; the Court expressed the opinion that *petition* was the proper mode to approach it, with anything that ought to be communicated to it, and, with that suggestion, said that it was open to counsel to take a rule to show cause why that affidavit should not be filed.

But as the Court was more likely to be correct, as to the mode of approach that was lawful, or, at least, as to the mode of approach which it desired to be adopted, and as the argument was simply on a question of form and would have been of no benefit to the respondent, it was not deemed advisable to ask or argue a rule to show cause, hence, the substance of that application took the shape of the petition which is now before you.

There was, therefore, at that time, an impression on the mind of the counsel, that it was rather a matter of form than of substance, and, that being the impression, your honor will understand that counsel were somewhat disappointed, when the suggestion fell from the Court, on the presentation of the petition, that the Court could only be approached, where a party was in contempt, by direct application, in terms, to purge from contempt.

This, naturally, induced counsel to cast their eyes over the whole field of the case, to learn what had occurred during its progress to raise their expectations, that the Court was open to an application other than the one then suggested by the Court.

I will now call your honor's attention to the opinion of the Court which was delivered in the matter—I may call it,—*In re Johnson;* a

matter of which I knew nothing and heard nothing, either as an application, or intended application, to your honor, until I saw the public announcement of it in the daily afternoon newspaper, the Bulletin.

It surprised me. I do not find fault with the gentleman who made it at all, for that was all proper and right,—but it surprised me quite as much as, when seated in the Court of Quarter Session, as a listener to its proceedings, the name of "Jane Johnson" was called, and she appeared on the witness stand. My surprise was alike in both cases.

In this opinion your honor says, in alluding to a legal proposition which you had advanced in a former opinion:

"His (the respondent's) duty then, as now, was and is, to bring in the bodies; or, if they passed beyond his control, to declare under oath or affirmation, so far as he knew, what had become of them; and from this duty, or from the restraint that seeks to enforce it, there can be no escape."

This remark in your honor's opinion, as you may well suppose, struck the counsel of Mr. Williamson with some force.

They had reason to believe it was expected of their client, that he should set out and present, in some respectful form, to your honor, his full knowledge upon this subject, and reason to believe that the form of affidavit would be acceptable to the Court. Perhaps, that was a hasty conclusion made by them at the time; but certainly with this opinion before them, they had ground to suppose that the Court was open and ready for such an application; they had reason to think so, for when the opinion of the Court was delivered, the attention of the Court was called by an *amicus curiæ*, to a supposed inaccuracy in the report of the former proceedings. The report runs thus:—Judge Kane said * * *—"A wish was expressed," (by the counsel of Mr. W.,) "to make such a motion" (to amend,) "and the Judge asked, that the motion might be reduced to writing and filed. But the motion was not drawn out or presented for the Court's consideration, and the Court never expressed any purpose to overrule such a motion, if one should be presented." This was said after Mr. Williamson was in custody for contempt.

There was that said both by your honor, and the gentleman who acted as *amicus curiæ*, which created the impression, that the Court was open to Mr. Williamson by motion; that it did not require the presentation of a petition in the form which your honor has intimated to us now. Hence the counsel have been, if they are wrong, mislead in this matter.

I do not intend to allude to the recollections of the different parties:

it is of no consequence here; but I intended to call the attention of the Court to it, to show what leads to the application now before your honor.

Then, again, when the application was made to this Court for leave to file this petition, counsel were at a loss for precedents, and so intimated to the Court; your honor alluded to a case which had occurred not long ago, and cited and quoted it as a precedent, as I understood it, which we would be justified in relying upon in this case, although the character of the contempt was somewhat different. I allude to the case of the Commonwealth *vs.* Wynkoop;—the habeas corpus in the case of Bill Fisher. Your honor stated that the Marshal acted under your advice, and we presumed that the same course ought to be followed here.

As it is intimated that the application must be by petition, counsel, naturally, looked to that case to find form and precedent to guide them. But I find, in that case, no such form and no such precedent. The defendant in that habeas corpus admitted that he had possession of the *bodies*, and set up his right to detain *them* by the process of another tribunal, a United States Commissioner. The Court said that it was his duty to produce them, and, as he declined to do so, committed him for that contempt. He was in the custody of the Sheriff as clearly and fully, for contempt, as Mr. Williamson has ever been, although I do not know that he was ever confined within the walls of Moyamensing—at least, I hope *not*—as to the fact, I did not inquire.

The contempt continued for several days; and what occurred during its continuance I will not state, particularly as there is no record of it; but I do find that on the 25th day of July, two days, certainly, after the contempt was committed, Marshal Wynkoop appeared in person, in Court, without any petition, without any purgation, so far as the record gives light upon the subject, and moved to amend his return, so as to comply with the order of the Court by producing the body, and set up, in connection with that production, his right to retain it under other process.

The contempt is immediately purged, Marshal Wynkoop is discharged, Bill Fisher is placed, by order of the Court, in the joint custody of the Marshal and the keeper of the county prison, until further order, and the next day, upon consideration, the Court order Bill Fisher to be remanded to the exclusive custody and control of the Marshal, under the process that he held for his removal. Now, if precedent, to which we have been referred, is to guide us, then after respectful application to this Court, either by motion as Wynkoop made

in person—(as our client cannot do)—or by counsel, or by petition to the Court, setting forth, substantially, what Wynkoop stated on that motion, and in his amended return, a compliance with the original order of the Court, or his inability to comply, we are entitled to relief.

Upon this point your honor has also said something in *re Johnson*.

Judge KANE. I would say to you, Mr. Gilpin, that the precedent to which you refer includes facts which do not appear upon the record as you have it in your hands. They are important facts.

Mr. GILPIN. There was no written communication to the Court that I am aware of. I have not alluded to all the facts, as some of them are private. And if there was any purgation other than the motion in Court, I presume it must have been made at the residence of the Judge when the Deputy Sheriff accompanied Wynkoop there during the time he was under contempt. Further than that it is not, perhaps, necessary to remark.

I should think that this case would not constitute a precedent in law, to establish that in all cases parties should file a petition in Court, in order to do what Wynkoop did, under the circumstances, by motion.

Judge KANE. I presume that you are aware of the facts bearing upon the case. There was a purgation, which you are aware of.

Mr. GILPIN. There was a visit to the residence of the Judge.

Judge KANE. There was a purgation in formal terms, and the individual who speaks to you at this moment was an agent in making it.

Mr. GILPIN. Nothing was done in Court. I have referred to the report of proceedings in Court.

Judge KANE. The first and last steps are correct as you have stated them.

Mr. GILPIN. It would have been, perhaps, an intrusion into private relations, to have alluded to it in any other way.

Therefore that case, as a judicial precedent, affords no ground for an application, by petition, to the Court. Nor can I conceive anything further, that could have been asked of Marshal Wynkoop than what he did when he went into Court. He was guilty of no personal disrespect.

It has never been laid down, as a principle, that a party who disobeys the process of the Court, is guilty of personal disrespect to the Court. But I will leave that branch of the subject.

Now, there are two classes of contempts; the one may be called *ordinary* and the other *extraordinary*. The ordinary contempts are those which relate to the proceedings of the Court, disobedience of the

orders of the Court, whether upon mesne process, interlocutory proceedings, or final process of the Court.

Extraordinary contempts are those flagrant acts in the presence of, or against the Court and its officers, its peace, its dignity and the conduct of its business.

It is within the former class, I think, that the case of our client comes; an ordinary contempt being a disobedience, as your honor has decided,—and I am not going to review that decision,—to the original order of the Court when it issued the habeas corpus requiring the production of the body of Jane Johnson. I am assuming that as the platform from which we start.

I find the practice laid down in several elementary books into which I have looked, that the party can take, as a general rule, no step in the case in which the contempt has been incurred until he purge his contempt, except: That he is allowed, either by petition, or by motion, to do any act which has a connection with his contempt, either in the way of showing the original order for it was irregular or void, that it has been satisfied, or that he is unable to perform the order of the Court;—and I can find no authority against that position. I can find cases in which it has been allowed.

In Daniel's Chancery Practice, the position which I have stated, the unquestionable right to proceed in any respectful application to the Court, either by motion or by petition, to relieve himself from the contempt, is not questioned; but it is stated as an elementary principle, and cases referred to sustain it.

If the door were effectually closed against a man imprisoned for contempt, it would be a very hard matter, under some circumstances, for counsel to know how, in the case of an ordinary contempt, to advise their client to proceed. There are even other applications which do not relate to the primary case in which the contempt was committed, in which the Court would be fully justified in allowing it without compromising its own dignity; and yet, if the door were shut to a petition like this, it would effectually shut the door to all such applications.

I want, respectfully, to call your attention to a little matter that occurred pending this case in which I was not concerned. An application was made to you, I have understood, without the knowledge of Mr. Williamson, for some relief or change, in the arrangements connected with his imprisonment. That application was not made, perhaps —(though your honor knows precisely and exactly how it was made,) —in open Court; the answer to it was, however, given by you in open Court. I saw it in the newspaper, and I have, therefore, alluded to it

I think I may say that that application was entertained by the Court; although the decision was against it.

Judge KANE. What application do you refer to?

Mr. GILPIN. Relative to a change of the place of his confinement.

Judge KANE. It has, perhaps, very little connection with the present case, but as it was thought advisable to introduce it into argument, I will correct the counsel as to the facts.

An application was presented to the Judge by two very respectable gentlemen of the medical profession, that Mr. Williamson should be removed from the prison where he then was into another prison, in as much as his health was suffering.

The Judge intimating, on the instant, that he would take care that such a removal was made, was told by the gentleman who made the application that it was not an application sanctioned by Mr. Williamson.

The Judge then said, I care not with whose sanction, or without whose sanction, the information is brought to me, that any one who is in confinement under the process of this Court is suffering in health, it is my office to see that he is relieved. Be good enough to place, said the Judge, that it may appear on paper, merely the physician's certificate to that effect.

And immediately after this and while these respectable gentlemen were preparing a certificate, it was mentioned to the Judge, by some of the members of the bar, that the place to which these medical gentlemen solicited that Mr. Williamson might be removed, was much less comfortable, and much less salubrious than the place where he then was.

Upon the gentlemen returning with their certificate, the Court so said to them, and said that Mr. Williamson should not be removed to a place which was less comfortable and less salubrious, without his sanction. They had no authority to give his sanction, and, thereupon, the Court, to guard against the possibility of Mr. Williamson's health suffering, endorsed, upon the application, authority to the Marshal to procure such accommodations as might be required by the health of the prisoner, the Court having authority to provide a special place of imprisonment where the present place of confinement is, by any means, unsuited to the prisoner's health.

From that day the Judge has heard nothing further of it, and knows only by common fame, what action was had on the part of Mr. Williamson. The Marshal had informed the Court, but it is unnecessary that the Court should mention to the counsel what was done.

Mr. GILPIN. I am very much obliged to your honor for giving all the facts of the case, but it was not with a view to find fault, or to make

a partial statement of facts, because I was, and my client was, perfectly satisfied with the action of the Court in that matter; and, as I stated, he had never made a complaint upon the subject, or a request.

I only made the application to show that there are circumstances under which a party might be very peculiarly situated, and if the doctrine were laid down so narrowly that, while in contempt, he can do nothing but apply by a naked and simple petition to purge that contempt, a prisoner might be in a peculiar predicament.

I will now state a case or two, to show you that in cases of ordinary contempt, committed by parties, they have been allowed to make application to the Court for relief, application less formal than the application which we now make to your honor

It is not necessary, I take it, to show cases where the application, or the prayer of the Petitioner, has been granted. That is not what we are now to argue, nor the sufficiency of this petition, and the disclosures in it, to entitle the respondent to his discharge; but it is the reception of it, the reading of it, and the filing of it that we are to discuss.

Judge KANE. Simply that one question.

Mr. GILPIN. There is one case to which I want to refer you as it occurred in one of the United States Courts. It is not quite to the point of the very matter under discussion before the Court, but it, at least, gives the views of one of the Justices of the Supreme Court of the United States, on the subject of contempt; and it throws some light upon the subject of contempt under the Act of Congress, of 1831, the conclusiveness of answers or allegations under oath, submitted to the Court in aid of the answer, where the Court requires the party to travel further than the answer which was put in.

I allude to the case in 1 Curtis' Circuit Court Reps. p. 190, in re Pitman.

I will now call your attention to the case in 4 Henning and Mumford; the case of Fisher *vs.* Fisher, a party in contempt for failure to answer.

He came into Court without any petition, and asked leave, and was allowed to file his answer, he only being put upon terms that he should not avail himself of the delay which the Statutes of the State would have allowed him, of not filing his answer until six months had elapsed. This was a case of flat contempt. In the same book, p. 504, Lane *vs.* Elvey, a plea was allowed where the defendant was in contempt. In Palmer *vs.* Kelly, 4 Sanford's Chancery Reps., p. 575, a defendant committed for contempt, for violating an injunction by selling property equitably belonging to the complainant, after two months' imprisonment,

applied for his discharge, on the ground that he had no means of paying the fine imposed upon him by the Court, which fine was equivalent to the value of the property which he had sold. The prayer was refused; that is, his discharge was refused, but the application was entertained, and argued on the merits; his discharge was refused on other grounds, so that you will perceive that this case is, exactly, in point. Mr. Williamson now moves, may it please your honor,—upon the ground stated in the petition—showing an utter inability to comply with the original order of the Court.

It is not for me to say whether the court will believe that statement or give it full credence; that is not what we are here to discuss, but that the Court ought to entertain it, under this authority, it seems to me very clear, and it ought to allow him to have a hearing upon the merits.

Your honor has said in an opinion to which I have referred several times, *in re Johnson:* "In the case of Mr. Williamson, the commitment is for a refusal to answer, that is to say, to make a full and lawful answer to the writ of habeas corpus, an answer setting forth all the facts within his knowledge, which are necessary to a decision by the Court, whether we have not the power to procure the negroes and control those in whose custody they were."

If I may be permitted, without going beyond the limit which the Court has assigned, I would say that petition is intended to show that Mr. Williamson had not the power to produce the alleged slaves, and that he had no control over the parties in whose custody they were.

There are many other cases to which I might refer, to show that applications for relief, in a respectful manner, in any shape, have not been refused. Indeed I cannot find any instance in which it has been refused. Not one; and the absence of all authority, to the contrary is, it seems to me, something in our favor.

There is a case, referred to by my colleague, in 6 Price's Rep., which I will not read; and as I do not wish to go further into the law on this head, I will leave these authorities with you, and trust that you will, upon a calm consideration of this matter, allow the Petitioner to apply, by petition in a respectful way, that you will hear it, and decide upon its merits afterwards.

If Mr. Meredith has any authorities, I will cite them for him before Mr. Vandyke speaks.

Mr. MEREDITH. I would say, Sir, with regard to the authorities which I shall have occasion to refer to, that I never like the habit of merely handing the counsel about to speak, a list of authorities, as it

has a tendency to confuse him, although I think it quite fair that Mr. Van Dyke, should have a right to reply to any authorities that I may cite.

Judge KANE. Perhaps the better plan will be for you to open your views at once.

Mr. MEREDITH. That would amount to my not having a reply.

Judge KANE. In any way most agreeable to you. You may give and receive the same opportunity on both sides.

Mr. MEREDITH. I have no objection to Mr. Van Dyke having reference to the authorities.

Mr. VAN DYKE. I suppose it right for the learned counsel to present all their authorities upon the case, as it may not be necessary for me to say a word, as is often the case; and therefore, I think that all the views of the gentlemen on the other side ought to be, first, presented to the Court.

Judge KANE, (to Mr. MEREDITH.) I will hear you Sir. I would rather hear all the views that are on one side, and then I can call upon the counsel opposed to you.

Mr. MEREDITH. That will make a double opening.

Judge KANE. Unless you do not confine yourself to the remarks of your colleague; the usual course is, that one side presents all the points to which the attention of the other is to be called.

Mr. MEREDITH. I do not know that I shall present any different points from my colleague, because, from the nature of the case, it can hardly be said to have points, as it involves a general view of the whole subject.

Judge KANE. The only thing which I gathered from Mr. Gilpin's argument is a question of form. His view, as presented to me, simply makes it a question of form.

Mr. MEREDITH. I will say sir, in regard to this petition, that I should be exceedingly sorry, in the view that I take of the subject, for a great many reasons, if it should be found impossible to be entertained. Because, Sir, my own feelings, from the beginning of this very untoward affair have been, that there was no benefit or advantage to be derived in any respect, either to the party or to the administration of justice, or in any aspect that you can take of the matter, by a repetition of applications; causing, undoubtedly, more or less irritation, I mean out of doors, sir, and beyond the walls of a Court of justice.

I have, therefore, felt it to be my duty, both to the party, and to the administration of justice, to endeavor, when we come before the Court, to come with an application that will lead to some distinct and specific

result, and I shall be exceedingly sorry to find that the result is, simply, that to which I have alluded, of additional excitement and disturbance; further applications necessary, and all this sort of thing.

While absent from the city, as the origin of this petition has been gone into, I will observe that during a temporary absence of mine from the city, an affidavit was prepared and presented to your honor, the ideas contained in which, as I understood afterwards, were founded upon expressions in the opinion delivered by you, in the matter of Jane Johnson, as reported in the newspapers. With the application of Jane Johnson I had nothing to do, nor had I any knowledge of it until I heard it casually spoken of as an item of intelligence, of what had been done in Court. Your opinion was directed to the nature and character of this contempt; and it was substantially understood to be announced, that the prisoner would be held until he should satisfy the Court by his oath or affirmation, that it was out of his power to produce the bodies, or, in default of which, he should produce the bodies. Founded upon this,—and I have no doubt with a full belief that it would meet the views of the Court,—my learned colleagues, during my absence, had taken the affidavit of Mr. Williamson to that effect, covering a period of time, posterior to that to which the former opinion of the Court was understood to refer, and beginning at the time when he lost sight of the woman in the carriage at Dock street.

As I understood the opinion of the Court, in Mr. Williamson's case, there was no evidence, whatever, that, at any moment, posterior to that time, he had control of the woman,—direct evidence I mean, sir; but, —if I understood the opinion of the Court upon this subject,—that there was conceived by the Court to be direct evidence of some control previous to that time, which would, by inference, draw down a subsequent control; and I believe that I understood it rightly

Judge KANE. That is correct, sir.

Mr. MEREDITH. This affidavit took up the transaction at that point of time where, in the opinion of the Court, the direct evidence ceased. It then, in the most direct terms, assures the Court that neither directly nor indirectly, had he any knowledge, other than that which was derived from the newspapers, or reports of public occurrences, of the whereabouts or of the situation of the party.

Now, sir, I regretted, very much, to find that that was not the view which the Court had intended to express; because I could have desired, as I have said, that any application presented to you should be one that you could entertain.

My learned colleagues who presented that paper, I have no doubt, were

perfectly sincere in the belief that the form of the paper which was required by the Court,—(under the view which they had taken of the opinion of the Court, on refusing leave to file this affidavit,)—was that of a petition instead of an affidavit; and that that was the only difficulty with the case.

They, therefore acted, I have no doubt, in perfect good faith, in preparing this petition, believing it to be in conformity with the wish of the Court. It appears, now, that they misunderstood what transpired, to a certain extent at least. They prepared, one of them, a short petition, praying that the affidavit might be permitted to be filed; and it was at my suggestion, that instead of this the substance of the affidavit was embodied in the petition. The petition as originally prepared, also contained a respectful protest against the jurisdiction of the Court, which I did not consider as objectionable, my reasons for which I have already stated, as to its being, in my opinion, more candid on the part of Mr. Williamson, and because I had no reason to believe that it would have the slightest unfavorable effect upon the decision of the case.

Now, sir, under these circumstances, in presenting not merely a petition to file an affidavit, but in presenting a petition for the discharge of the Petitioner, I was in the hope and expectation that, upon this petition you would do one of two things. The non-reception of the petition I did not look to as a probable result, I must confess, but I did hope that you would do one of two things.

Either, that being satisfied with the statements in the petition as to the absolute inability to produce the bodies, that you would, thereupon, discharge the Petitioner; or that, if you did not think that that was a sufficient information to your conscience of the fact that he was unable to obey the writ, that you would make a conditional order that upon the answering of interrogatories, or upon the doing of some positive thing, placed upon the record, so that he might know exactly where he was, that he should be, thereupon, discharged. Now, sir, it is with great sorrow, not on my own account, because, after all, it does not affect us if we have been so unfortunate as to misunderstand the desire of the Court, and to present facts in a manner not acceptable to the judgment of the Court, but it is on various accounts—

Judge KANE. The views which you express, Mr. Meredith, strike me with very great force. I have no wish at all, that a mere form, however I may consider it is required by precedent, shall be adhered to where, substantially, what I suppose to be due course of law is observed.

It may be, that upon a view of this petition, that I may find in it that which might influence my judicial action; and while there is a difference

of opinion between counsel on the two sides as to what may be its contents, it may be that I may be misled upon any adjudication which I am to make upon this preliminary motion.

I am not sure whether it is not best that I should, as an individual, take that paper that I may examine it for myself. If there is nothing in it but what I would esteem a formal variance from the regular course of procedure, I should entertain it. If, on the other hand, there were objections of a more serious character, I should indicate it perhaps with more clearness, than when listening to an argument which, necessarily, takes an abstract form.

Unless there is, apparent to the counsel who are before me, any objection to such a course, I will receive from you a copy of it, not as a paper filed, but as a paper which you offer to argue from; if that will facilitate in any way the discussion or the result.

Mr. MEREDITH. I was about to press, as seriously as I was able, the absolute necessity of your reading the contents of this petition, because the proprieties of feeling which I have already expressed upon the subject forbid us to affirm positively that it is what we suppose it to be; and where we differ in opinion I cannot say that my opinion is the correct one, according to the views of the Court.

Mr. VAN DYKE. I differ in opinion.

Mr. MEREDITH. (Handing an instrument in writing to the Court.) Here is the petition, sir, or a copy of it.

Judge KANE. I will take the copy and will meet you, if agreeable, to-morrow morning at 10 o'clock.

Mr. VAN DYKE. Will your honor hear me on that point.

Judge KANE. Certainly, sir.

Mr. VAN DYKE. I take it, sir, upon the present aspect of the cause, and under the call of the learned counsel, by the Court, to state the substance of that petition, and they having failed to state that the character of that petition is such as comes within the ruling of the Court, it is not competent for that petition to be presented.

The Judge of a Court may see a paper, as an individual, but I take it that it cannot be presented, except it is of a certain character to the Court, in open Court. And I support my view, sir, with this simple argument.

I am enabled, I think, to show to the satisfaction of the Court, that a party in contempt, whether it be a contempt arising from a refusal to obey some remedial process of the Court, or a contempt arising out of a direct and positive insult to the Court, that a party in such contempt has no status in Court to present any paper until he is clear of his con-

tempt. That he has no right to ask the Court to receive a paper, even for the purpose of taking a rule to show cause why the paper should not be filed.

Such papers have been presented in Courts, but they have been presented, whenever they have been, under an assertion and belief that it was a paper to purge the contempt. And, until the Court sees the paper, that allegation having been made by the party presenting the petition, the Court has to take it for granted that it is such a paper. But the learned gentlemen, on the day of the first hearing, when the last motion was made, and also to-day, have yet failed to state to this Court, in their professional capacity, that they consider this petition a petition from Mr. Williamson to purge his contempt.

I will read to your honor, in support of this, a single authority or two, simply upon the question whether this paper should go to the Court at all; and I think they are clear.

The first case to which I will refer is that of Lott vs. Burrow, 2 Con. Court Rep. 167.—"If a witness in Court refuse to answer questions touching his interest in the cause, he may be committed as for a contempt," (this is not a direct insult to the Court, but arising out of a refusal to do justice to a party in litigation) "and closely confined without bail or mainprize until he purge his contempt and answer."

I read the case, as I have not been able to get the book, from the digest, and it may not be the exact words of the report.

In Johnson vs. Pinny 1, page, 646.—"Where a party is in contempt, the Court will grant no application of his which is not a matter of right. He must first purge his contempt by complying with the order of the Court which he has not obeyed. An evasive answer or an insufficient return to a *habeas corpus*," &c., which refers to a matter which is not in dispute.

Grant vs. Grant, 10 Humphrey's Tennessee Rep. p. 464.—"No answer can be received from a defendant in Chancery who stands in contempt, until he is discharged from such contempt by order of the Chancellor. The clerk has no power to discharge the contempt or receive the answer."

In Wallace Rep. 134, U. S. vs. Wayne.—"Where a defendant is brought in he may submit his contempt,"—this is an answer to the suggestion of Mr. Meredith, with regard to interrogatories,—"or he may demand of the Court to have interrogatories put."

Mr. MEREDITH. That is the case to which I referred; and the one in which, as I mentioned, the rule had been held differently. There is another case in 9 Watts.

Judge KANE. That same question occurred in the case of a party whose name resembles the party here, Passmore's case.

Mr. MEREDITH. There the question did not exactly arise. I think that interrogatories were propounded there, according to the English practice; but there is a case in 9 Watts in which the Supreme Court have said something like what was said in U. S. vs. Wayne.

Judge KANE. I speak of Passmore's case; the case that led to the impeachment of the Judges.

Mr. MEREDITH. I intended to refer to the same case.

Mr. VAN DYKE. The case in Wallace is, that a party need not be submitted to interrogatories where he had an opportunity of answering, as Mr. Williamson had, at his own suggestion. There is another case in 2 Brown's Par. Rep. 277. Oswald vs. Disson. It is also quoted in 5 Viner's abridgement 450.

In 1 Simons and Stewart, 121, Green vs. Thompson.—"The defendant, in order to clear his contempt, must not only tender the costs, but if they are refused, must also obtain the order for discharging his contempt."

In Jones's Case, 2 Strange.—"One guilty of contempt cannot have the benefit of rules."

The same is laid down in Smith's Chancery, the book to which my friend has referred.

Now, sir, I take it, if these authorities are law, that Mr. Williamson has no position in Court, except upon a petition to purge his contempt. And, upon a petition to purge his contempt—which petition is an admission of the contempt—upon a petition to purge his contempt drawn in due form; then, if the Court is satisfied of the sincerity of that petition, and of the sincerity of his allegation in that petition, it reinstates him just in the position that he was immediately before the contempt.

The only question, therefore, to which I direct the attention of the Court, (and I have only referred to the few authorities which I have just cited for the purpose of discharging my duty in protecting the Court from a further insult which might take place,) the simple question is: Whether this paper can be presented to the Court except it is accompanied at the time with the prima facie allegation on the part of the counsel present presenting it, that it is a petition to purge his contempt.

The learned gentlemen might assert that, and it might turn out afterwards not to be such a petition; but upon the allegation of the learned gentlemen,—counsel familiar with the rules of practice,—that it is such a petition, I take it that not only myself, that the Court would be bound to receive it; and then it would be for the Judge to decide whether or not it is a petition to purge the contempt. But the party having no

standing in Court, except upon a prayer in due form to purge the contempt that he has already been guilty of, no paper can be presented to this learned Court, except accompanied with the allegation of that party that it is a paper for that purpose.

With these simple remarks I leave that question with the Court at the present stage.

Mr. MEREDITH. If your honor please, it seems that a part of that protection which the learned counsel on the other side feels it to be his duty to extend to the Court, consists in endeavoring to prevent you from knowing the contents of the paper,—of which he is advised,—in order that you may judge whether it contains any further insult to the Court, as he contends it does, or not.

Judge KANE. I do not so understand it.

Mr. VAN DYKE. I do not object to the Court taking the paper.

Judge KANE. I do not understand Mr. Van Dyke as objecting to the Judge taking the paper.

Mr. MEREDITH. Then to what did the remarks of the gentleman apply? I understood that to be his whole argument.

Mr. VAN DYKE. I object to its being presented in that way. A paper presented to the Court becomes part of the records of the Court, if presented in argument. I object to its being presented in that way.

Judge KANE. That is what I understood to be the import of the gentleman's remarks.

Mr. VAN DYKE. I object to its being presented in such a phase. If, in argument, counsel rise and present a paper to the Court, it becomes part of the record, and I say, therefore, that it must be accompanied with the allegation, that it is a petition to purge from contempt.

Mr. MEREDITH. Our learned opponent has felt it to be his duty to deliver an address in opposition to that which your honor proposed doing; and I must beg your patience, because I do not wish to be misundrstood in this matter, to say a few words in reply.

I was about to represent to you, before I came to argue upon the point as to the contents of this petition, that it was utterly impossible to form a conception of its receivability,—to coin a word for the occasion,—without knowing the contents of it; and, that the only mode of knowing them was, by allowing the Court to have them read, or read them for itself. I do not agree, on the contrary, I have never heard, that by reading a paper to the Court in argument, it becomes, ipso facto, part of the record. It was not so understood by me; and I presumed, that if the paper had been received it would be filed, but if not received it cannot, possibly, be filed. However, I am better satisfied

that you should read it privately, as you will have a better opportunity of digesting it. But, sir, I must say that the idea of putting it to counsel to affirm that it is, in point of law, a certain thing, particularly when the opposite counsel, having read it, affirms that, as far as he understands it, it is no such thing,—would be to reduce the administration of justice to such a point, as it never will be while you preside; that, to wit, of calling upon counsel, before their clients shall be heard, to pledge their veracity as to a point of law.

Now, sir, we are so far from admitting that this paper is not a purgation of the kind that I have mentioned, by showing the real state of facts, that, on the contrary, what we have tendered to demonstrate is, that it is, substantially, in accordance with the precedents upon that very subject.

Every case cited by Mr. Van Dyke, (except the case in Brown's Parl. Reports, which, as he states it, contains nothing that we should quarrel with;)—I say that upon almost every case which he has cited, we intend to rely.

The question is, what is a clearance of contempt? and I offer to show that upon the principles of these adjudications, that this is a clearing of the contempt.

In regard to interrogatories,—and I was going further into the cases if necessary,—as I stated, I cannot find any case in England, where they have been put at the instance of the party defendant.

In the case decided by Judge Griffith and Judge Tilghman, Wallace's Reports, it was, certainly, left to the option of the party, whether he should be placed upon interrogatories. In 9 Watts, the Court did, undoubtedly, say that the absence of interrogatories is not fatal. It is an opinion of Judge Sergeant's, that it was pretty much at the option of either party or the Court, whether the interrogatories should be propounded. But all these matters will be properly heard if you will take the petition and read it.

Judge KANE. Well, gentlemen, I will meet you to morrow morning, at 10 o'clock.

The Court was then adjourned accordingly.

DISTRICT COURT OF THE UNITED STATES.

October 27th, 1855.

BEFORE JUDGE KANE.

Court opens at 10 o'clock, A. M.

Judge KANE. I have looked through, gentlemen, the paper submitted to my inspection by the counsel of Mr. Williamson yesterday. I do not find that it contains a purgation of his contempt or the expression of any wish, on his part, to make such purgation. I, therefore, will hear the counsel further if they see fit to go on.

Mr. MEREDITH. I was in hopes, sir, that your examination of that paper would have had a different result. I will now, briefly proceed to lay before you the authorities which have occured to me on this subject, bearing in mind, throughout, what I stated yesterday about the different kinds of contempt.

The contempt here, sir, consists in nothing but an alleged want of compliance with the writ issued by the Court, or the process of the Court. Now, sir, I have not been able to find any precisely such cases in the books either English or American; i. e. I have not been able to find a case in which a party has been in custody as a respondent on a *habeas corpus* for any other purpose than to answer interrogatories propounded to him by the Court, or even for that purpose unless there were something on the face of the return itself, evasive. For that reason, it will not be easy to find the precise mode in which this particular matter is to be treated, but I take it, by analogy, to be like an ordinary case of a non-compliance with the process of the Court.

In the first place I would observe that wherever, in such cases, interrogatories have been administered, it has not been, technically, for the purpose of obtaining a disavowal of any personal disrespect to the Court, for that is not involved in the question, but they have been administered for the purpose of sifting the conscience of the party making the return, or who is called upon for the answers; in either case, the return, or answer, being *prima facia* conclusive, the return absolutely so, and the answer remaining so, until contradicted, as the rules of equity require.

Now, sir, the question that I am considering is,—whether it lies

on the party to pray to be submitted to interrogatories or whether it is a matter for the Court to administer to him if deemed necessary, and which, when administered, he is to answer. As I understand it, Judge Story says, upon the state of facts adduced in the case in 3 Mason, to which I wish to refer, although you are no doubt well acquainted with it, that the regular course of practice was to propound interrogatories and compel the party in that way to disclose, more fully, the matters within his knowledge for the satisfaction of the Court.

Judge KANE. I am very familiar with the case.

Mr. MEREDITH. I should like to call your attention to what Judge Story said on that occasion. (The book not being in Court at the time, it was sent for and Mr. M. proceeded with his remarks.)

Now, sir, I have looked as carefully as I could into the English books, and as I have had no authority produced by the other side differing from what I myself have found, I am left to assume that there is none; and as I understand them, I cannot find a case of any other practice whatever, than that of which Judge Story speaks. In those Courts where the process of interrogatories commenced, it was exactly the compulsory process of the Court in compelling answers to them which was most complained of by the subjects. When that principle was, from necessity, adopted in the common law, and in the Court of Chancery in common law proceedings, which a habeas corpus is, and which the Chancellor, though it has been denied that he could issue a writ of habeas corpus, before the Stat. Charles 2, yet, undoubtedly, under that statute, has the same right to do as the other Judges; when this came to be adopted in these Courts, sir, this proceeding by interrogatory accompanied it as a necessary accompaniment.

At what precise period it became necessary to resort to process of this kind I cannot state; it, probably, was pretty early, but it was after the commencement of the reports of the common law.

The common law generally executed its own process; that is to say, when it first began to be complained that men were unlawfully deprived of personal liberty, the writ of homine replegiando was the writ of common law which the Sheriff executed. The defendant in the writ was commanded to do nothing. The Sheriff was ordered to replevy the man that was unlawfully in custody if he could find him,

and, thereupon, the defendant must either produce the party or submit to the due process of law.

But the writ of *habeas corpus* being found more convenient, the process of homine replegiando fell into comparative disuse, and then when a case arose that a party absolutely disobeyed the mandate of the Court, he committed that species of contempt of which I have spoken, viz., a contempt in disobeying process.

The interrogatories were therefore put upon him by the Court, as in the case in 3 Mason. I need scarcely say that I cite this case for this point only. I do not admit its authority on the question of jurisdiction.

This case, U. S. vs. Green, (3d Mason Rep. p. 484,) was of a *habeas corpus*, where the judge was not satisfied with the return. Judge Story says:

"I am not satisfied that the return contains all those facts within the knowledge of the defendant, which are necessary to be brought before the Court, to enable it to decide, whether he is entitled to a discharge, or, in other words, whether he has not now a power to produce the infant, and control those in whose custody she is.

"There is no doubt that an attachment is the proper process to bring the defendant into Court. But suppose he were here, the next step would be to require him to purge his contempt, and to answer interrogatories. That is the very object of the present motion."

Judge KANE. I do not know whether I have misconceived, but I think that under the Pennsylvania practice,—I speak from my general recollection,—it has been asserted to be the right of the defendant to claim that interrogatories be adminstered to him. I have never doubted that the Court had the right to require them.

Mr. MEREDITH. But this case (in 3 Mason) as I understand it, is in conformity with all the English cases that I have been able to find, not that the Court has a right to require them, but that it is the course of the Court, and it is the duty of the Court to administer those interrogatories, if the case be one requiring interrogatories, which upon the record this case is not, or to discharge the party.

I will now present, sir, what perhaps I should have presented sooner, an English authority, although it is not my purpose to trouble you with a numerous list of cases, because I find none inconsistent with the one that I have already cited, and as none have been produced by the other side differing therefrom, I am at liberty to presume that Sergeant Hawkins states the matter correctly.

Now, sir, this is a work of so much authority, that, as I have said, I do not feel myself justified in toiling with you through a considerable number of English cases, and I shall merely say, as I did at first, that I find none contradicting it; and if there be any such I should be glad to have them presented that I may have an opportunity of making my observations and answers by other cases. I take the authorities that I have already cited, therefore, upon this subject, as a true statement of the course of the Court upon contempts, namely, that interrogatories are to be administered, where the contempt does not consist in a mere refusal to make a sufficient return; as for instance, where the object of the interrogatories is to ascertain the fact whether the party has used opprobrious language to the Court, or done violence to the officers of the Court or in presence of the Court. Under these circumstances and in this connection he is called upon to answer interrogatories, and he is bound over to do so; and the Court compels him to do so, because he stands charged with contempt; and if he be convicted, he is sentenced to imprisonment for a limited time. But still more is this course necessary where the whole object of the process of contempt is to enforce his answer. That is the very thing which he has failed to do sufficiently, or which it is assumed he has failed to do. The whole object of the Court is not to punish a personal disrespect of the Court, or its officers or process, because none such has been committed, in this case, but it is to enforce an answer in order to do away with that constructive disrespect which consists in the mere disobedience of process, in not complying with it in a complete and full manner. It does not involve any other kind of disrespect than that constructive kind. The whole object, therefore, in such case is to force the party to answer interrogatories. He is to be compelled to do it. He ought to be committed or held to bail to answer interrogatories. I find that the common law rule laid down, as I say, clearly and fully upon this point, is, that if the practice of the King's Bench were to be understood as prevailing here, and this party had been so committed, he could now claim to be entitled to a discharge on the ground that interrogatories had not been administered within the four days. I ought to add, however, that upon reference to the cases which Sergeant Hawkins relies upon, I do find that in some of them the Court require, that notice should be given to the other side, so that

he may not be taken by surprise, and then he is to file his interrogatories within the time above mentioned.

Now, sir, this shows, I think, clearly :—that in a Court of common law upon the worst kind of contempt, upon that kind which is between the Court or the public and the party, and not that between party and party merely, as it is in cases where the defendant has not made a full return to the process of the Court, which might happen by inadvertence, or a thousand causes not at all leading to any intention to disobey its process,—that even in the worst kind of cases, and still more in the more favorable kind, so far there is no necessity for the presentation of a petition, praying to be allowed to purge contempt ; but that the contempt is actually purged, *ipso facto*, by the neglect of the crown or of the opposite party to file interrogatories within four days, and the defendant is entitled to be discharged upon mere motion on the ground of that default.

Now, sir, when we look to Chancery, we find there what amounts substantially to the same thing. The nearest that I can come to the position of this case in point of principle in Chancery, (and I shall be exceedingly obliged, if you know of anything which approaches nearer in analogy, that you will mention it so that I may refer to it,) the nearest position to which I can come is a refusal to appear or a refusal to answer. Upon these points I find the practice of the English Chancery to be, as I understand it, very clear, and for that practice I shall not refer so much to the cases now, because they speak in general terms of clearing contempt, and they leave open the question as to what is considered a clearing of contempt. We find here in Hawkins what is considered a clearing of contempt at common law, and here I must make another reservation. I do not understand that in every possible case the answer of a defendant is to clear himself of contempt. I admit that I can find cases in which it is laid down in the common law Courts that where a party has beaten an officer, for instance, in an attempt to serve process, that the Court is not tied down to his mere answers as to the fact, because that fact may be ascertained otherwise; but if the body of testimony be not entirely overwhelming but a mere balance between the statement of the respondent in his answer and another witness, the Court have given credence to the answer of a party even in such a case as that. But on the other

hand I do affirm with entire confidence that where the contempt consists in the mere want of a sufficient return to a writ, that there the Court *must* take the answer of the party as final and conclusive, and therefore the sole object is to administer interrogatories in order to purge the conscience of the defendant, and they can be administered only where the return is on its face evasive.

On page 206, Sergeant Hawkins, in his Pleas of the Crown, says:

"And if the offence be of a heinous nature, and the person attending the Court upon such a rule to answer it, or appearing upon an attachment, be apparently guilty, the Court will generally commit him immediately, in order to answer interrogatories to be exhibited against him in relation to such contempt. But if there be any favorable circumstances to extenuate or excuse the offence, or if it appears doubtful whether the party be guilty of it or not, the court will generally in their discretion suffer the party, having first given notice of his intention to the prosecutor, to enter into a recognizance to answer such interrogatories; and if no such interrogatories be exhibited within four days after such recognizance, will discharge the recognizance upon motion; but if the party do not make such motion, and the interrogatories be exhibited after the four days, the Court will compel him to answer them."

Well, sir, I have shown by Hawkins in the English common law, that the defendant is purged by answering the interrogatories that the Court command him to answer. That is a purgation of contempt. There is no disavowal of disrespect to the Court, because it would be a constructive disrespect to make a disavowal of the kind, and it would be drawing into the case that which thus far had not existed, to wit: an intentional disrespect; and therefore I cannot find in the common law books, on a failure to make a sufficient answer to a writ, that there ever has been in the books of practice, or forms, or anywhere else, anything like an approach to a petition, praying to purge him from disrespect to the Court, which indeed, would consist in an unnecessary disavowal of that which never existed. The purgation of that contempt is, by making full that answer which the Court found on the face of it not to be full, or by making that return which had not been made, or by obeying that writ which had not been obeyed; and when that is done, the record is sufficient and the contempt is purged. And so much does the purgation of such a contempt depend upon that, that as I have shown by the authority already cited, if these interrogatories be not propounded within four days, such default of the opposite party

is a purgation of the contempt, and the party is entitled to his discharge.

I find, sir, in Chancery, the forms and proceedings are of the same character. For instance, I refer to the forms in Smith's Chancery Practice, which is a recent book, and although not of so high authority as the one which I have just cited, yet as to the forms themselves, of course, must be supposed to follow the course of the Court; and, as to the substance of the treatise itself, it is subject to correction by the authorities referred to. (Referring to Smith's Practice, Mr. M. here remarks:) Here are forms, sir, of notices of motion, and one of them is a notice of a motion to commit the defendant and to examine him *viva voce* before the master, the third answer being regarded as insufficient, that is, he having for the third time made an evasive answer to the process of the Court, which commanded him to make a full answer the first time. I will read this notice, sir, which is, I think clear proof for the course of the Court.

In 2d Smith's Chancery Practice, page 562, I find the following form of notice.

"Notice of motion to commit the defendant, and to examine him *viva voce* before the Master, his third answer being reported insufficient.

In Chancery.—*Between, &c.*

Take notice, &c., that the said defendant may be examined upon interrogatories before the said Master to the points wherein the said defendant's answers are reported insufficient, and that he may stand committed to his Majesty's Prison of the Fleet, until he shall perfectly answer the said interrogatories, or this Court make other order to the contrary. Dated, &c.

Yours, &c.

To &c."

I will now read the petition from Smith, p. 577.

"*Petition to discharge a Defendant out of Custody.*

In Chancery.—*Between, &c.*

To the Right Honorable, &c., the humble petition of the defendant showeth, that the plaintiff having filed his bill against your petitioner, he appeared thereto. That your petitioner being in contempt for want of his answer, an attachment was issued against him, and your petitioner was taken thereon, (or gave bail:) that your petitioner has filed his answer, and is willing to pay the costs of his contempt

Your petitioner, therefore, &c., that your petitioner upon his paying or tendering his costs of contempt, may be discharged out of the custody of ———, as to his said contempt.

And your petitioner, &c."

Now, sir, that is all; that is the form in which the contempt is cleared. But, although this be the usual form, I presume, used in Chancery now, yet in strict practice I admit that it is proper and right to get leave from the Court first to file his answer.

I will now read from Newland's Chancery Practice and Forms, 2d vol. as to a like petition, which is a book of more authority than that of Smith's.

I find on page 187, as follows:

"Petition to be discharged out of custody of the Sergeant-at-arms.

Between, &c.

To the Right Honorable, the Master of the Rolls, the humble petition of the defendant showeth, That your petitioners are and have been (for above a fortnight) in custody of the Sergeant-at-arms attending this Court, for not answering to the plaintiff's bill, which your petitioners have since answered, and paid the cost of the contempts, and the Clerk of the other side, who consents to your petitioner's discharge, as by the certificate annexed appears: your petitioners, therefore, humbly pray your Honors that your petitioners may be discharged out of the custody of the Sergeant-at-arms, paying their fees,

And your petitioner shall ever pray, &c."

Upon that petition the party had filed his answer and paid the costs, and the opposite party consenting, he is discharged, which shows that when the thing ordered by the Court to be done, is done, there is an end of it;—there is nothing further to purge. That is the clearing of the contempt. Now, sir, in the text of these books, you will find the same principles laid down. I shall not detain you, however, by reading it, and with your permission, you will consider me as having referred to the text which relates to this matter.

Now, sir, so much as to what is the purgation of a contempt of this kind. It consists in giving to the Court in full that information which the Court thought was not given to it in full by the original answer or return, or by making such a statement as satisfies the Court, that the original return or answer so far as appertains to any question pending in the case itself, was really and truly full and correct. Taking the case of an insufficient return to a *habeas corpus*, sir, where the insufficiency consisted in the belief on the part of the judge, that there had been a custody or control of some kind, of the party whose body is required to be produced, before the issuing of the writ, and upon that founding the inference, that

that control or custody continued at the time of the service of the writ, and that therefore that part of the return which had unnecessarily stated anything about the control or custody, before the service of the writ, being untrue, the inference carried to the subsequent part of the return, is such as to require further clearing up on the part of the respondent,—taking it in that connection, which I suppose to be this case as nearly as I can state it, what ought the commitment to be for? To coerce; it is not as a punishment, or else it would be for a limited time. It should be on its face, simply to coerce a fuller answer by the party, because the return of the respondent to these prerogative writs is conclusive, and all the Court can do is to require it to be made more full, and to sift and purge his conscience in any mode that it may think necessary to the administration of justice.

The whole purpose and intent, therefore, of this commitment, should have been like that mentioned in the petition which I read from Smith. The Petitioner is—he can only be, in due course of law—committed until he shall make response to such interrogatories as the Court shall command him to answer. Now, sir, why have they not been filed, if this is the purpose of the commitment? This Petitioner has now already lain in prison three months this day, I think, because his answer to the writ of habeas corpus was believed by your honor not to be sufficiently full. He should have been committed, therefore, until he should answer such interrogatories as you might think fit to put to him, or to allow the other party to put to him. Now, I shall be glad if the learned counsel on the other side will show me a case in which, under such circumstances, the party has been compelled to remain in custody until he presents a prayer that he may be submitted to interrogatories. If he can, I shall be exceedingly glad to see it. And this is not answered by saying what we all admit, and what I am as ready to concede as the opposite side to advance and your honor to decide, to wit: that when a party is in contempt his first step is to clear himself of contempt. That is very true: but what is the clearance of his contempt? For that we are to look to the law, and we find in this connection, that the clearance is in the answer to the interrogatories put to him. How is he to answer when none are put? Here is the prayer of the opposite party in the Chancery books, praying that the respondent be committed until he shall answer

interrogatories, or the Court shall direct that he need not do it. That is the term of his commitment. In common law courts, we find when he is taken on attachment he is held to bail—to do what? To answer interrogatories. That is the end which the law proposes.

How is he to do it until they be put, and where is the case to be found in which a party committed for an insufficient return or answer to any process of the Court—nay, for refusing to answer at all the process of the Court, which is a much higher contempt than that of merely an insufficient answer, because it involves a sort of absolute disregard of the Court;—where is the case to be found, I ask, in which a party so committed, has been left to lie for three months without ever having interrogatories propounded in writing or orally, or anything being put upon the record for him to answer? Sir, I have not been able to find such a case. I do find, as I say, and I admit, that he is first to clear his contempt, that is to say, that he is not to be at liberty to disregard the step in which he has disobeyed the process of the Court, and to come into Court and move in other respects like a common suitor. He cannot do it. Therefore, in Chancery, if he be committed for a contempt in filing an in sufficient answer, or in refusing to answer the bill, he is not at liberty until that contempt has been cleared, to come in and file a demurrer to the bill, thus declining to answer altogether, and going back a step in the cause. I believe in such a case, that he may file a plea to the bill, because that goes to matter of fact material to the case. But he lies there in that case until he comes forward to make his answer, the order of the Court being that he shall answer, in the case just mentioned, the bill, or in another case the interrogatories, because there is nothing else for him to answer. And in fact, this party stands as if he were committed for not answering a bill which has never been filed; for the original writ of habeas corpus simply commands him to bring in the body. It assumes the fact, that he has the body in his possession, and his return that he has not the body, if not sufficiently clear to satisfy the conscience of the Court, puts the Court, which has for the first time heard of it, under the necessity of examining him in regard to that fact; and that examination I take to be by the interrogatories, which are in fact the bill which he is called upon to answer, and if he refuses, he is to be committed until he answers it. So that this Petitioner has been imprisoned for three months, and may be for life, for

not answering interrogatories which have never been propounded to him, or put upon the record:—which, in fact, have no existence.

In Daniel's Chancery Practice I find this passage:

(1 Dan. p. 559,) "It is to be observed, that where process of contempt has been issued against a defendant for want of an answer, he is entitled to be discharged from his contempt immediately upon his putting in an answer, and paying or tendering the costs of his contempt; and the Court will not detain him in custody till the sufficiency of his answer has been decided upon, unless he has already put in three answers which have been reported insufficient. For by the 10th order of 1828, upon a third answer being reported insufficient, the defendant shall be examined upon interrogatories to the points reported insufficient, and shall stand committed until such defendant shall have perfectly answered such interrogatories. An order for the defendant's discharge may be obtained by motion, *ex parte*, upon production of the certificate of answer filed, and proof of the tender of costs."

You will find in that passage, I think, the law clearly stated, to wit: that the clearance of the contempt consists in presenting himself to the Court, upon such a ground as shows a compliance with the order of the Court. My colleague also yesterday, sir, gave you a case in Sandford's Reports, in which a motion was received for the discharge of a party, on the ground of his inability to obey the mandate of the Court.

In 6 Price's Reports is a case to which I wish to call your attention, where a party who was in contempt was discharged upon motion, although he had been committed for disobeying an injunction of the Court, which is a very high grade of contempt. Being thus in contempt and having lain some time, he was discharged on motion simply, and without any petition. Now, sir, that was a contempt of a somewhat higher nature than this, although it belonged to the same general class, to wit: disobedience to the process of the Court.

Judge KANE. You refer to the case in 6 Price; do you not?

Mr. MEREDITH. Yes, sir. The book will be here in a moment.

Now, sir, that is a contempt of a higher nature, although it belongs to the same general class, but it consists in an absolute refusal to obey, whereas, *this* consists of a believed want of a full obedience, and that want to be tested, if required, by a further examination on interrogatories. Yet, even in that case, sir, after the party had lain in prison for a time, which was conceived to be long enough to operate as a punishment, he was discharged, upon motion, and that in a very

solemn way. The practice was not a common one; it was, perhaps new, and the Court held the matter under consideration for the purpose of consulting with the highest authority, and, after that consultation, discharged him.

Mr. Meredith here asked again for 6 Price, and not obtaining it, he remarked:

It is very unpleasant to me, sir, not to have the books; not so much, because it disorders the train of my own ideas, as because the fact of my being obliged for want of them to pass from point to point, in a somewhat disconnected way, must necessarily tax your mind.

Judge KANE. Not at all, sir.

Mr. MEREDITH. I will therefore, for a few moments, go back and say a few words as to its being the duty of the Court to propound interrogatories, as I have shown you by the English practice, the commitment tends to that end solely.

Judge KANE. A case to my mind more closely analogous than that to which you have referred, is where a party refuses to answer interrogatories, and who is in contempt for thus refusing to answer.

Mr. MEREDITH. There he is to pray, because he cannot otherwise get out to answer: but then he must have refused to answer before he was committed. This Petitioner has never refused to answer any thing.

Judge KANE. I speak of it as a case more nearly analogous when he prays that he may come in to make the answer. By the analogy, the party who is in contempt for not answering fully to the writ of habeas corpus, prays that he may come in to make a full answer.

Mr. MEREDITH. I will come to that presently; but I will say, respectfully in the meanwhile, that I do not consider the case of a refusal to answer interrogatories analogous, because in that instance, you have got to the end of the thing.

Judge KANE. On an interrogatory in cases of contempt, or an interrogatory administered before the master or in Court, where there is a refusal to make a response and the party is in contempt for refusal and has been so adjudged, the party desiring to make the answer applies to the Court, if I understand the practice, for permission *now* to answer, and thereupon he is permitted to come into Court to make the answer.

Mr. MEREDITH. He has had something put to him to answer, and he has refused to answer it.

Judge KANE. That is the *former* interrogatory put to him. The analogy, too, of his having refused to answer to the demands of the writ of habeas corpus, he asks now to come in and to make that answer which should have been made before—this is the analogy which to my mind is more direct than any cases to which you have referred.

Mr. MEREDITH. I am happy that you have mentioned it, as I consider it perfectly analogous to the case of a Bill, and I will show why, presently. In the meanwhile, I will say a word in regard to the course which has been pursued in one or two cases that have occurred in this district. One is the case from Wallace, in which undoubtedly Judge Griffith and Judge Tilghman did lay down the rule to be, that it was at the option of the party, to pray to be submitted to interrogatories. There the other side had asked the Court to propound them; and although the Court spoke of the English practice, as in accordance with the course which they adopted, no authorities were given, and I am totally unable to find on what they relied. In Passmore's case, (3 Yates, 438,) the party submitted to answer interrogatories; that is to say, being brought before the Court to answer them, he did so; but there is no petition praying that interrogatories might be propounded; and it simply amounts to this, that upon the interrogatories being put to him he answered them.

Judge KANE. I find in the arguments of Mr. Dallas and Mr. Ingersoll, which followed the impeachment of the Chief Justice, that this is spoken of as the established Pennsylvania practice; but upon what basis I do not know.

Mr. MEREDITH. That is so:—and in fact there is nothing which goes to show that the Pennsylvania practice differed from the English.

In the case in 9 Watts, the County Commissioners had disobeyed the order of the Court, and it was decided to be a contempt, and they were committed without interrogatories. The case was taken up by *certiorari* to the Supreme Court—and it was decided that the mere want of interrogatories was not a fatal defect. As far as I can understand the Court, they seem to think that if the interrogatories were not required by the defendant to be filed, the omission to file them could not be taken advantage of after con-

viction. I do not think that the case throws a great deal of light upon the subject, other than that the omission to file the interrogatories, was not fatal to the commitment in the appellate Court; and I am sorry to say that I do not find any reference to any English or any other authority upon that point. It therefore does not amount to anything, and we have against it the whole body of the English authorities, and, as I understand it, the Supreme Court, under the lead of Judge Shippen, in Passmore's case, the simple *dictum* of Judges Griffith and Tilghman, in Wayne's case in Wallace's Reports. These judges were men for whom we all entertain the highest respect, but where their opinion purports to be based upon something in the English books and not upon any peculiarity of practice here, and when the English books are searched in vain to find the authority on which alone they gave their judgement, the necessary presumption is, that they were mistaken in gathering the purport of the precedents to which they had referred. I can come to no other conclusion.

Judge KANE. Do you remember who were the counsel in that case of Wallace?

Mr. MEREDITH. I think Mr. Dallas and Mr. Ingersoll on one side, and Mr. Chauncey and Mr. Wallace on the other side. There were two sets of cases going on at the same time. They were both of a political cast; one against the editor of the "United States Gazette," and the other against the editor of the "Aurora;" and they seemed to go on neck and neck at the same time.

Now, sir, under this view of this part of the case, what analogy can we find between a case like this and the case of the refusal to answer an interrogatory? As in the case of a refusal to answer a bill, the object of commitment is to compel an answer to the interrogatory, a thing which is on the record. I consider the refusal to answer the interrogatory exactly like the refusal to answer the bill, because the bill is an interrogatory propounded by the authority of the Court, and the exigency of the writ of subpœna is, that the defendant shall come in and answer that bill; so that I look upon it to be the same case precisely. But the difficulty here is, sir, that there is nothing on the record for him to answer. Now, this is not merely formal, as you will perceive in a moment. Here is a writ of habeas corpus, which assumes that the party is in the custody of the respondent. There is nothing propounded to him on that sub-

ject in the writ. He is commanded to produce the body. On the return of the writ, instead of producing the body, he presents the excuse that he cannot produce it, because the body is not in his custody, and has not been since the time that the writ was served. Now, sir, he has made his statement directly to the fact. Upon that statement the learned judge, before whom these proceedings are pending, arrives at the conclusion, that his conscience is not satisfied that that statement of the fact is true. It desires therefore, to sift the conscience of the party. How is he to do this? By interrogatories. Now, if it be said, let him go on and make a fuller answer, how is he to do it? A fuller answer he cannot make, because, when he answered that he has not now the custody, &c. of the parties, and that he never had, that is as full an answer as it is possible for human ingenuity to conceive. But you have thought fit to commit him, for the purpose as I gather, that he may be, in the way of a cross-examination, sifted as to the circumstances. Now, sir, how is he to foresee what that examination may be?

Judge KANE. You have named the precise difficulty that rests upon my mind. How can he make a response in advance by any instrument that he files? Not knowing what is the interrogatory which will be administered to him, I apprehend that the answer precludes that part of the argument. It is impossible that he can know beforehand what will be the character of the interrogatory, and it does not seem to me clear that he can file a paper which shall be responsive to, he knows not what, and thus relieve himself from contempt. It seems to me that the argument you are kind enough to address to me, would carry us to this: that the party having been committed for refusing to make the full answer, must declare that he is willing to make the full answer when thereto interrogated, whereupon the Court interrogates him. The first step, inasmuch as there is no definite interrogatory to which he can file his answer, must be, as it strikes me from the necessities of the case, a protestation on his part, that he is now prepared to make an answer to such interrogatories as shall be administered to him, touching the proper return to the writ of habeas corpus.

Mr. MEREDITH. That relieves me from this part of the argument, because it shows that the propounding of interrogatories is the thing to which he can alone answer, and therefore he has no mode of purging

the contempt or showing that he is not guilty of it, but by answering those interrogatories; and here none have been propounded.

Judge KANE. And the Court cannot administer the interrogatories to a party who has already placed himself in contempt, until he proffers himself as willing to do so.

Mr. MEREDITH. These cases all show that on the contrary, the very commitment of the party ought to be until he shall answer interrogatories, and these are required to be promptly filed, that he may know what he has to answer and prepare his answer accordingly.

Judge KANE. In that class of cases which must have been distinguished in your mind, the business of the party who prosecutes, that is to say, upon whose motion the commitment for contempt is made, undoubtedly is to file his interrogatories. It is undoubtedly competent, however, to the defendant to remain in prison as long as he chooses, unless he will avail himself of the laches of the party prosecuting, and make a motion for his discharge, because there has been a failure on the part of the other side to file his interrogatories. No doubt, in that class of cases, such is the fact. The one party is bound to file interrogatories. If he does not file interrogatories, the other party gives him notice that he will move the Court for a discharge, because of the default of the party prosecuting in not filing interrogatories within the four days; and thereupon, as a matter of course, the party is discharged upon simply proving that he has given notice of the motion, and upon inspection of the record of the Court, finding there no interrogatories.

Mr. MEREDITH. Then I need not argue further the point which I was upon, that he is not called upon, nor is it possible for him to make further answer to the writ of habeas corpus; and as it stands now, he must wait until he is cross-examined. So far there is no difference of opinion between us, as that is the point I was about to prove. This alters the aspect of the case as it stands on the record. Now, sir, I would respectfully ask the learned counsel on the opposite side to produce any case in England or this country, from the beginning of the recorded decisions of either down to the present time, in which a party has been kept in prison for not answering that which has never been propounded to him or is not filed upon the record of the Court. He cannot do it, sir, because the case does not exist. If a party refuses to answer a bill, the bill is filed; he knows what it is he has to answer. If he refuses to answer an interrogatory, whether a party or a witness, the interrogatory is upon the records of the Court, or has been put to him orally, and he knows what he has to answer. But where, I would like to see, is the case in which a party has been held in restraint not

only for three months, but for the shortest space of time, for not answering interrogatories which are not filed? How can he answer them? He would be discharged under the four day rule, and he is now restrained in custody for an unlimited time by the default of the opposite party in not doing that which it is their duty to do. On this ground, there is not, certainly, a non-compliance, on his part, with the order of the Court.

Judge KANE. It is not so, by any means. He is committed because he has made an evasive return which the Court has held to be not a legal return. It is competent to him to declare his willingness to make a full return. Whenever he does so the Court indicates to him, by interrogatories, the points as to which his return or his answer must be other than as it is. The only difficulty which seems to me to pervade the argument, (perhaps because I have not correctly followed you) is merely in that there is no interrogatory filed. It seems to me there could be none filed addressed to a party who is at the time in contempt. I mean that it would be in vain for the Court to direct a party to answer, the party having refused. I will not interrupt you further.

Mr. MEREDITH. I think that we agree upon the question of the return. If he amends his return without interrogatories, who knows that it will be better than the original? It cannot be done. If, on the other hand, it be upon interrogatories, it cannot be by an amendment of his return. The amendment of his return cannot be by answers to interrogatories. Your honor may, after interrogatories have been answered, if you think fit, give him leave to amend his return in accordance with those answers, (though I know of no such practice,) but the two things are essentially distinct. The return is his own. It must be hit or miss when he is in trouble, the conscience of the Court not being satisfied with his original return, because it is not for him to assume in regard to what particular matters the Court may desire to be further informed. Therefore, it is impossible for him to say, "I will amend my return," because his answer may not be what is required, and he is left in the dark to grope his way about until he happen to hit that which will satisfy the conscience of the Court. But the moment you come to interrogatories, you have done with the possibility of an amendment to the return, because he cannot amend his return by answers to interrogatories.

Judge KANE. My remark was, return or answer. They are clearly distinguishable. I do not mean to say that a man's answers in Court can be considered an amendment of his return. It is merely a question of phraseology, in which I am anxious to stand corrected.

Mr. MEREDITH. I will confine myself, therefore, to the question of interrogatories. I say, then, the party is in the situation of one who is committed for cross-examination for the purpose of sifting his conscience. Now, sir, in such a case, the practice is to propound to him the interrogatories which he is called upon to answer, the purpose of his commitment being to make him answer,—the recognizance being that he will appear to answer—the prayer in Chancery being that he may be committed until he shall answer—answer what? Answer something which is on the record of the Court after four days, during which time he is bailed or is under an attachment. That is the practice in all the cases which I have been able to find. The thing on the record is what he is to come forward and answer. Now, sir, I again request that if there be found in the books a case in which a party is held for refusing to answer interrogatories, to submit to a cross-examination, when there are no interrogatories filed during the short interval which the common law rule allows for the purpose of filing them, I should be very glad if the opposite side would furnish it. I think that there is no such case; for in all the cases which I have found there has been something filed on the records of the Court for the party to answer, and then he can answer and then he can be discharged.

Now, sir, under these circumstances, let me say a word as to the real scope, as I understand it, of this petition. The Petitioner shows his readiness to answer. There are no interrogatories filed. He shows his readiness to answer, and his desire to give full information to the Court by making a clear, distinct, positive averment, so far as he is able by the exercise of his intellect to make it full and complete; that in point of fact since the time when he saw the parties in the carriage in Dock street, he has had no communication, direct or indirect, and no knowledge, direct or indirect, further than everybody has had through the public press or rumors of public events, of the whereabouts or situation or position of these people at all.

Now, sir, suppose you are satisfied, upon this averment, of the utter impossibility of his obeying the writ or producing the bodies; and suppose, moreover, that you should be of opinion that the statement ought to be made in answer to interrogatories, or that the return ought to be amended. If so, make the order that interrogatories shall be filed and command him, for the first time, to answer, which he either does, or remains as he is if he refuses. He then has propounded to him that which I find from the cases he is entitled to have, namely, something on the record of the Court which he is called upon to answer. Now, sir, if you are satisfied that his suggestion in the petition

shows the impossibility of his obeying the writ by producing the bodies, discharge him upon that; but if you think that the stricter forms of proceeding would require an amendment of the return, by stating these facts, or if you think that interrogatories are wanting, let the interrogatories be propounded to him, and he will then be in contempt if he refuses to answer them; but that has not yet come. He has never yet failed to answer everything that has been propounded to him. Now, sir, I was not, as I have already explained to you, in Court, nor had I any personal knowledge of what occurred at the time when the affidavit was presented out of which this petition grew, but from the information which I derived of what transpired before the presentation of this petition from the only one of my learned colleagues with whom I had an opportunity of consulting, the other being absent in Mifflin county, I had not the slightest doubt on my mind that the real and *bona fide* belief of my colleague was and is that this petition was in accordance with the suggestion of your honor. It seems, however, that you were misunderstood, and it is very unfortunate that it is so.

Judge KANE. I am sorry to think so, for I have taken great pains upon a great many occasions to indicate what was the opinion of the judge upon this subject. I think that neither counsel—I do not speak of yourself, sir, because I have not had the honor of communicating with you—I think that neither counsel nor client has had, for months past, any doubt as to what was considered by the judge the appropriate course of proceeding.

Mr. MEREDITH. Now let me ask you to do that which the Chancellor has done a thousand times, and which he does every day, because it is, after all, hard measure, perhaps, that by the misapprehension of counsel of what passes verbally at the bar, or by the still easier misapprehension of a party, who, being in custody, has no knowledge of what is passing, that through these misapprehensions a citizen should be detained an hour beyond the time when he is entitled to his discharge; and let me, under these circumstances, ask you, as I was about to do before, that if you find that this answer contained in his petition does not satisfy your demands, and are of opinion that in point of form it ought to be by answering interrogatories or by amending his return,—let me ask you to do as the Chancellor does every day, as precedents show,—make an order specifying what is to be done, that is, that he be discharged upon answering interrogatories, or on such other condition as you may deem proper. If you are not satis-

fied in point of fact that the statement in his petition is true, order interrogatories to be filed in a certain time, and that he be discharged on making satisfactory answer to them, although this would not be required in the English practice, because he would be entitled to his discharge, though the answer be insufficient, if interrogatories be not filed within four days.

Judge KANE. I have no difficulty at all upon the point suggested by Mr. Meredith, and there never has been a difficulty in my mind of indicating in any form most acceptable.

Mr. MEREDITH. If your honor will make on this petition an order that he shall be discharged upon satisfactorily answering the interrogatories that shall be filed in a certain time, or if you are satisfied that he may be discharged by amending his return in accordance with his petition, give him leave to do so.

Judge KANE. The proper course, as it seems to me, is simply this: The party adjudicated to be in contempt submits himself by writing to the jurisdiction of the Court to answer interrogatories. I speak of the particular case. That is what I understand to be technical purgation, the clearing of the contempt. The party declares that he is now willing to answer interrogatories upon the subject matter. The Court then proceeds, either by the aid of counsel or directly, to interrogate him in writing or orally (both forms, I believe, are practised in precedents,) and he is discharged or not, as the case may be. I see no difficulty in indicating this in the form of an order upon the mere suggestion of the learned counsel who stands before me, that upon his filing what I have called a purgation, a declaration that he is now prepared to answer interrogatories, and to submit himself to examination touching matters which, in the judgment of the Court, should have been embraced in his return, that he then be submitted to those interrogatories or subjected to that examination. I see no difficulty in it. All that seems to me to be necessary now, or which has been necessary heretofore, is a distinct declaration by the party in contempt that he is prepared to answer when called upon to answer by the Court. That seems to me to be the practice. And I will say this: the research which the gentlemen have been kind enough to submit themselves to, which they have found necessary to do, and which I have found necessary to precede them in, has satisfied them, I have no doubt, as it has satisfied me, that the precedents are not clear; but one thing has seemed to me perfectly certain, that it was in the power of the party, even supposing the Court had erred as to the proper

form, to present himself before the Court from the very hour in which he was committed and onward up to the present time, as one willing to answer touching the subjects which should have been embraced in the return to the writ. That has been, in my view, a course so simple, so free from all embarrassment, that I have felt some surprise that after the repeated intimations that have fallen from the bench that such was the course, that it has never been pursued. There seems to have been misapprehension on the part of the counsel, and it may possibly be that their client himself has not been advised of what was the declared view of the Court. If so, it is a regret to me.

Mr. MEREDITH. The apprehension of counsel concerned at the time when the case was first before your honor, and of which I knew nothing, was that on that occasion the Petitioner was submitted to an examination under the contempt, and of course you perceive that that was a misapprehension of a very grave character and productive of peculiar consequences. At a later period in the proceedings you stated that there had been a misunderstanding, and that you had not then so looked upon it. But such was the understanding of counsel present, and from what transpired they of course were of the opinion that it was impossible for him to present himself in the shape you speak of without being guilty of a further contempt. Now, sir, the want of precedents as to matters of this kind of course shows why the petition is in such a shape; but I do find cases constantly, and almost uniformly, in the books, that upon petition to be discharged from contempt, the Chancellor refusing to discharge upon that petition, makes an order that the party shall be discharged upon doing so and so, that is upon answering interrogatories or on some other condition. I do not see why the Petitioner should be required to make a petition stating that he is willing to answer, but let the Court first file the interrogatories and then let him answer them or not.

Judge KANE. It may be that I am in error, but forms have *sometimes* meaning and I think that in this case the form is not without meaning. I am not aware that it would be exactly right for a Court, after a party has for three months remained in contempt, when committed for an omission or refusal to make a full and true return to the writ of habeas corpus, for the Court to speak on its records of interrogatories to be administered to him, he being already recusant. It seems to me that the party should declare his willingness. It seems to me that we have such cases constantly occurring where witnesses refuse to answer at the bar, who are parties in contempt, and when the witnesses an-

nounce that they are now ready to answer, the Court addresses questions to them.

Mr. MEREDITH. I am so far from questioning the fact that forms have meaning, that I should enlarge your observation and say, not only that they *sometimes* have meaning, but that they *always* have meaning. Now, my difficulty is that I cannot find a form anywhere in which a party professes his willingness to answer something which has never been propounded to him. I can find abundance of forms where the parties are in custody for refusing to answer something that has been propounded, a point on which I agree with your honor; but I most respectfully affirm that I cannot find a form in which a party expresses his willingness to answer that which has never been propounded, neither do I think that such a form can be found. There is always in all the cases which have come within my observation something upon the record which has been propounded by the Court for him to answer, some question or interrogatory that he is called upon to answer.

Judge KANE. There is one case which I remember in which the party in contempt requested that the questions should be propounded to him before he was required to say that he would answer.

Mr. MEREDITH. And that was an objection.

Judge KANE. Yes, sir, and the Court held that he must engage to answer the questions before they were propounded.

Mr. MEREDITH. Do you remember where it is?

Judge KANE. I think that I can find it. It has occurred to me since this case began.

Mr. MEREDITH. I think that there must be something peculiar in that case, because the general class is not of that kind. Where a party is bailed on the attachment, the condition of the recognisance is that he will appear and answer interrogatories to be filed. Perhaps in the case you refer to, the defendant may have refused to give such a recognisance, in which case he would of course be committed to answer.

Now, sir, here is this case in 6 Price's Exchequer Reports, page 321. It was decided thus—I will read the syllabus:

"The Court will order a person who has been in custody for any given time under an attachment for a contempt of its authority in disobeying an injunction, to be discharged on motion, if the portion of his imprisonment be shewn to its satisfaction to be commensurate with the degree of the offence, on the terms of paying the costs of his contempt; notwithstanding the application be opposed on the part of the plaintiff."

That is to say, although the Petitioner did not make an offer to do the thing which the Court thought necessary, before he could be dis-

charged, yet the Court made an order directing that upon the doing of a certain thing he should be discharged.

Judge KANE. The case to which you have referred was that of an irreparable injury, and it was not in the power of the party to restore the land to pasture.

Mr. MEREDITH. Without a petition, or an affidavit declaring any willingness on the part of the party to do anything, but simply an affidavit stating certain facts, and the motion being thereupon that he should be discharged on certain grounds, the Court made an order that he should be discharged on complying with certain conditions which they set down and which were not mentioned before. That seems to tally with all the other precedents, even in instances of the worst kinds of contempt, such as disrespect to the Court itself by a turbulent deportment or by the use of ill language, under which circumstances the punishment is by imprisonment for a limited time; but where the contempt consists in the mere disobedience of the process of the Court, or of the want of a full answer, an insufficient answer being filed, in such cases I find always, so far as I can see, that when a petition is presented praying for a discharge, the Court does not tell the Petitioner that he must put something additional in his petition; they take the fact of his presenting himself by petition, or, (as in the case referred to in in 6 Price) by affidavit, as sufficient, and thereupon order him to be discharged on condition that he do so and so,—that he answer interrogatories if they be filed, or if it be for not answering a bill, that on answering the bill and paying costs he shall be discharged. So in this case I ask your honor to make a similar order.

Mr. VAN DYKE. I shall not detain your honor more than five minutes, I think, in replying to what Mr. Meredith has said, because, in addition to the cases and authorities which I offered your honor yesterday, it seems to me that the reply to the learned gentleman's argument may be contained in a few words. His argument has taken a wide scope, sir, and it appears to have been more an argument that Mr. Williamson should be discharged by the Court as the case now stands, than an argument upon the question whether a person in contempt has any standing in Court whatever. It is an argument, sir, whether a party is properly in contempt, and not an argument whether a party by a solemn adjudication of a Court of justice being in contempt has a standing in Court. Now, I did not understand this learned Court, when the case was heard on a prayer to file an affidavit or a motion to file an affidavit, to intimate to the learned counsel that it would hear an argument as to whether Mr. Williamson was in contempt. I have taken

it, may it please the Court, that you have solemnly adjudicated that fact, that such a judgment of the Court stands upon the records of the Court, and so far as Mr. Williamson is concerned, before this honorable Court he is to take it as law and verity. I say then that the argument of the learned gentleman of the other side has taken a very wide scope when he undertakes to question the propriety of the Court in committing a person for contempt, when there have been no interrogatories filed, and when he undertakes to say that the commitment for contempt was wrong because it was a commitment of contempt for not answering something which was not upon the records of the Court for him to answer. That whole matter has been adjudicated by this learned Court, and the counsel on the other side as well as myself, the Court and the respondent, will take it as law that he is in contempt. Now the only question which your honor suggested to the learned gentleman is this, can a party confessedly in contempt come into Court and ask to be discharged when he still remains in contempt; and if he can, how is he to get clear of his contempt? The learned gentleman has farther, as it appears to me, forgotten the distinction, or at least not adverted to the distinction between a party under attachment prior to an adjudication of contempt, and a party after the judgment of the Court is past. The case referred to in 3 Mason was that of a party under an attachment, no official judgment upon the question of contempt having passed. An attachment is not a commitment, except of a temporary character. It may be a commitment from day to day until the Court adjudges the question of contempt, and so long as the party is in confinement under the attachment, it being but a temporary judgment of the Court, or an interlocutory decree of the Court, it is perfectly competent for the party to come in and say that he wants interrogatories propounded to him, or, as in 9 Watts, he may do otherwise, or the Court may order that interrogatories be put, and so long as the judgment of the Court upon the contempt is not rendered, although the defendant be in confinement under an attachment, he may do so, beeause it is interlocutory. That was the case in 3 Mason; but after a solemn judgment passed by the Court upon reviewing the return that the party has made which is stated to be contemptuous, after hearing all the facts of the case, and the party is by a solemn decree of the Court said to be in contempt, then it is too late for the defendant, so long as he thus remains in contempt, to ask this Court or any other Court in contempt of which he remains, to do anything until there be an order of the Court showing that that contempt is purged and that he is reinstated as he was in the Court immediately

previous to the decree of the Court by which be was adjudged to be in contempt.

Now, the learned gentleman has said that there is nothing upon the record for him to answer. That is not the question. The Court has adjudged that there was something upon the records for him to answer; and they have further adjudged, after hearing the facts of the case from the lips of the witness, as in the Circuit Court of the District of Columbia, in the case of Davis, which was an application of some negroes to be discharged from the custody of a party who held them as slaves—they have adjudged so as in the case of Davis before Judge Cranch, upon his voluntarily submitting himself, that not only was there something for him to answer, but that he has not answered it. What was there for him to answer? There was nothing in the shape of interrogatories put to a witness brought before a commissioner or before the Court to procure testimony; there was not an injunction with which he refused to comply, which is not something for the party to answer, but something for him to obey; but there was a writ of this Court, ordering him to bring certain persons before this honorable Court, which he answered by stating certain facts, which the Court adjudged to be evasive and illusory, and that was the contempt. I say, then, that the learned gentleman appears to have wandered from the main question here, and to have argued questions he was not called upon to argue; because, in the second place, there is nothing for the party to answer, when the Court has solemnly adjudged that there was something to answer and he has not done it. Now, it will be said that it is hard that a party cannot make this objection. Why, it is not pretended—at least I do not pretend—that he has not an opportunity, and cannot have an opportunity, of making it. But how is he to do it? Why, he must first get rid of that difficulty which stands in his way, and which, so long as it stands there, he can take no step before the Court, and he must be reinstated by submitting to the judgment of this Court solemnly made, and in a collateral question solemnly reaffirmed, offer a review of all the facts in the case; he must first submit to the judgment of the Court by coming in and asking to be relieved by purgation of his contempt, whereupon he is reinstated in the position he formerly occupied in Court, and interrogatories are submitted or not, as the case may afterwards shape itself in its different phases. Now, this is the law, and why is it so? The Court has adjudicated that the return made by Mr. Passmore Williamson is a contempt, and he asks now to come in and file a petition. I will not undertake to say (because I object to its being read in Court) what it contains, although we know as individuals and not as

part of this case, the Court has seen it. It is perfectly proper, therefore, for me to presume what is contained therein. It may be a petition reiterating the return already made. If so, he commits a second contempt, and how is the Court to punish him for it while he is in contempt now? It may be a petition reiterating part of the return already made, and, by implication, confessing the falsity of another part. If so, he comes into Court, and in the very petition praying for his discharge, because he has not committed a contempt, admits the falsity of his former return, which the Court has adjudged to be a contempt. If so, he commits an additional contempt, and how is the Court to punish him for it? He is already in confinement for contempt of Court, and if he is to be permitted to file a petition which may contain these things, he commits an additional contempt and the Court has no power over him; and if he can do it once, he can do it fifty times, and as often as there are days in the year

Now, in reference to the request of the learned gentleman, that the Court shall make a written decree as to what Mr. Williamson must do, I have a single word to suggest to your honor, and I think it is a proper one.

It strikes me that if this Court, or the counsel who are opposed to Mr. Williamson, treat him in any way as a party not in contempt, the contempt is waived; and I take it that an order from this Court requesting Mr. Williamson, or telling him upon the records of this Court that he shall do this or that, or any order except it be an order merely propounding what the law is, is a waiver on the part of the Court of the contempt in which he now stands. If a defendant refuse to answer to a bill in equity and he is committed for a contempt in not answering, and the complainant subsequently receives his answer, the contempt is waived, upon the principle that he is dealing with him as a party not in contempt; and I therefore most respectfully object to the suggestion of my learned friend that this Court shall say to Mr. Williamson, "You may do this," or "you may do that;" and I respectfully suggest to your honor that the only step which this Court can take under the present aspect of the case in delivering its opinion to propound what the law is, that you neither can tell him what he may do any more than this learned Court can call him before the bar now and ask him the question whether he intended to evade the writ, or whether he was connected with certain persons for the purpose of evading just such a process as this was which issued from this Court, and which certainly, if I were now to come into Court and ask an order that Mr. Williamson be allowed to answer such a question, your honor would say, "Mr. Williamson is in contempt; I

cannot permit this question to be answered until he gets rid of it." The learned gentleman asks the Court to go still further; that is, to call upon him, or to say that he must do this or that, directed to him as an order, thus preparing the petition for him to get rid of the contempt, which it is his duty to do himself. I do not think, may it please the Court, that there is anything else in the argument of the learned gentleman, or anything that has been said to which I have occasion to reply. The case of Davis in 5 Cranch, to which I have referred, your honor, as well as the learned counsel, are aware of, and I do not think that there is anything else unanswered. I have not quite kept my pledge in regard to the time which I would consume. I hope your honor will excuse me for not doing so.

Mr. MEREDITH. I have very little to reply to the learned counsel who has just spoken. The manner in which this present application originated is quite familiar to your honor. Some days ago this very petition was offered to be presented to the Court, and you expressed, I will not say a disinclination to receive it, but that it was not such a one as ought to be received; and you were good enough, sir, to invite an argument on that subject. In obedience to that invitation, with notice to the counsel of Col. Wheeler in order that he might appear upon the argument, we have presented ourselves to argue the case. Now, sir, it seems that the learned counsel of Mr. Wheeler understands me to have gone beyond the precise point to which you invited, and beyond which you declined to hear this argument. I inquired pretty particularly at the commencement of it what was the point to which you intended to confine us, and I understood it was to the point as to whether this was a proper petition to be received upon this occasion or not. Now, the learned counsel of Mr. Wheeler unfortunately—

Mr. VAN DYKE. I do not appear as such. At the commencement of the case, as I stated, I appeared as the counsel for the U. S.

Mr. MEREDITH. Then I decline taking any notice of the District Attorney, as I consider that he has nothing to do with the matter at all, and I shall consider Mr. Van Dyke in the remarks which he has made as acting as an *amicus curiæ*.

Mr. VAN DYKE. The gentleman may consider me as acting in any position he pleases; it makes no difference, one way or the other.

Mr. MEREDITH. That may be, sir; but I cannot admit that Mr. Passmore Williamson is in contest with the United States, or that the District Attorney, or the law officer of the United States, has anything to do with it. I will not admit it unless your honor says that I am bound to do so. In whatever light I am to consider this matter, I can-

not stop to argue the point; and as I was about to observe, in whatever capacity our learned opponent appears, I must regret that he has so entirely misunderstood my argument as I had intended to make it, as to be under the impression that I had gone beyond the limits which the Court had assigned me. The objection being to the petition that it does not pray to be allowed to answer interrogatories, I conceived it to apply directly to the point to show that so far from a party being called upon to ask for them, that it was the duty of the Court to propound them at the time of his commitment or afterwards, and I thought that that was clear, sir. I intended to go no further, because if any other questions were open I should have much to say, but I thought that you limited us to this one point.

Now, sir, I should have been glad if the District Attorney, or the counsel for Col. Wheeler, or the *amicus curiæ*, or in whatever capacity the learned gentleman acted, if he had shown me what I asked him for.

Mr. VAN DYKE. What is that, sir?

Mr. MEREDITH. An authority or a case in which a party committed, has been committed for refusing to answer an interrogatory not propounded to him.

Mr. VAN DYKE. I have cited the case of Davis as one in point.

Mr. MEREDITH. Will you read it?

Mr. VAN DYKE reads from the case in 5 Cranch, as follows:

(5 Cranch. CC. Rep. page 623.) "The Court having examined and considered the return of Thomas M. Davis to the writ of *habeas corpus* aforesaid, and having heard Counsel thereupon, do adjudge the said answer to be evasive and insufficient, and that the said Davis is bound to produce the bodies of the said negroes, mentioned in the said writs, before the Court; and the said Davis being now present in Court, and refusing to produce the said negroes, it is therefore, this sixteenth day of January, 1840, ordered that the said Davis be committed to the custody of the Marshal, until he shall produce the said negroes, or be otherwise discharged in due course of law.

On the eighteenth day of January, 1840, it was further ordered by the Court, that in case the said Emanuel Price and Maria Course shall be surrendered by the said Thomas N. Davis, or by any other person for him, to the Marshal, he shall take the said negroes into his custody, subject to the further order of the Court, and that he then discharge the said Davis from jail."

The negroes afterwards came in and voluntarily submitted themselves, and were afterwards discharged as free negroes.

Mr. MEREDITH (taking the book). Now, sir, you will observe that the party was not committed there for the purpose of further sifting his conscience, was not merely attached, but convicted and adjudged in contempt for refusing to produce the bodies, and there was

therefore no interrogatory put to him. And in addition to that, on the the 18th of January, 1840, without statement that it was upon petition and therefore assumed to be on motion, it was further ordered by the Court, "That in case the said Emanuel Rice and Maria Course shall be surrendered by the said Thomas N. Davis, or by any other person for him, to the Marshal, he shall take the said negroes into his custody, subject to the further order of the Court, and that he then discharge the said Davis from jail."

Judge KANE. The same action that Chief Justice Kent took in the case of Stacey,

Mr. VAN DYKE. If Mr. Williamson does that there is no difficulty about it.

Mr. MEREDITH. If the Court do the same thing, Mr. Williamson will be discharged upon the propounding of interrogatories.

Mr. VAN DYKE. The Court ordered that if Davis did a certain thing he should be discharged.

Mr. MEREDITH. Your honor understands what I mean, and I will not further detain you, because I have detained you too long already; and I simply ask you either to discharge the party or to do what the Chancellor does every day, that is, to say what the party shall do as the condition of his discharge.

Now, sir, the commitment before Judge Story, in 3 Mason, was just such a one as you have stated this was intended to be. There was no final adjudication of the Court at all, and, as I need not say, after what has fallen from your honor, there has been nothing of the kind here.

Judge KANE. It is an interlocutory order.

Mr. MEREDITH. It stands, therefore, *ex confesso*, as such, notwithstanding the view of our Cerberean opponent. Now, sir, in regard to my opponent's argument, I have shown by all the authorities that it is a clearance of his contempt if he comply with the order of the Court when it has filed interrogatories, upon his doing which to the satisfaction of the Court he is to be discharged. I do not find, as I have said, (and I have asked Mr. Van Dyke to furnish me, if he could, and he has not done so) a case in which a form of petition of this kind has been rejected. In addition to this, I have shown a case in which, on bare motion, without petition, a party has been discharged; and I find always, where a party is committed upon interlocutory commitment, that the party is discharged where he complies with the order of the Court and answers the interrogatories which have been put to him.

Judge KANE. I will endeavor, gentlemen, either to file or deliver my opinion in open Court, on Monday next, or it may perhaps occupy me until Tuesday.

On Monday, Oct. 29th, 1855, a paper, of which the following is a copy, was filed of record :—

In the District Court of the United States, in and for the Eastern District of Pennsylvania.

U. S. A. *vs.* WILLIAMSON. } Sur motion for leave to file among the Records a certain paper.

And now, October 29th, 1855, the Court having heard argument upon the motion for leave to read and file among the records in this case, a certain paper writing, purporting to be the petition of Passmore Williamson, and having considered thereof, do refuse the leave moved for; inasmuch as it appears that the said Passmore Williamson is now remaining in contempt of this Court, and that by the said paper writing he doth in no wise make purgation of his said contempt, nor doth he thereby pray that he may be admitted to make such purgation; wherefore the said Passmore Williamson hath not, at this time, a standing in this Court.

To the end, however, that the said Passmore Williamson may, when thereto minded, the more readily relieve himself of his said contempt, it is ordered, that, whenever by petition in writing to be filed with the clerk, Passmore Williamson shall set forth under his oath or solemn affirmation, that he "desires to purge himself of the contempt, because of which he is now attached, and to that end is willing to make true answers to such interrogatories as may be addressed to him by the Court, touching the matters heretofore legally inquired of by the writ of habeas corpus to him directed, at the relation of John H. Wheeler," then the marshal do bring the said Passmore Williamson before the Court, if in session, or if the Court be not in session, then before the Judge at his chambers, to abide the further order of the Court in his behalf. And it is further ordered, that the clerk do furnish copies of this order to the said Passmore Williamson, and to the Attorney of the United States, and to the Marshal.

On Friday, Nov. 2d, 1855, Messrs. HOPPER, GILPIN and MEREDITH presented the following petition :—

U. S. A. *vs.* WILLIAMSON. } District Court U. S, Eastern District of Pennsylvania.

To the Honorable the Judge of the District Court of the United States for the Eastern District of Pennsylvania.

The petition of Passmore Williamson respectfully showeth :—

That he desires to purge himself of the contempt because of which

he is now attached, and to that end is willing to make true answers to such interrogatories as may be addressed to him by the Court touching the matter heretofore inquired of by the writ of habeas corpus to him directed at the relation of John H. Wheeler.

Wherefore he prays that he may be permitted to purge himself of said contempt, in making true answers to such interrogatories as may be addressed to him by the Hon. Court touching the premises.

P. WILLIAMSON.

Affirmed and subscribed before me, Nov. 2d, 1855.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Some conversation took place between the Judge and Counsel in relation to the omission of the word "legally" in the petition. The petition was received on Saturday, Nov. 3d. Mr. WILLIAMSON, his counsel, and JAMES C. VAN DYKE, Esq. appeared in Court, when the following proceedings took place:—

The Court addressed the defendant as follows:—

"Passmore Williamson—The Court has received your petition, and, upon consideration thereof, have thought right to grant the prayer thereof. You will, therefore, make here, in open Court, your solemn affirmation, that in the return heretofore made by you to the writ of habeas corpus which was issued from this Court at the relation of John H. Wheeler, and to the proceedings consequent thereupon, you have not intended a contempt of this Court, or of its process. Moreover, that you are now willing to make true answers to such interrogatories as may be addressed to you by the Court, touching the premises inquired of in the said writ of habeas corpus."

The required affirmation was then made in the form indicated by the Judge.

Judge KANE then inquired of Mr. VAN DYKE, if he had any suggestions to make to the Court.

Mr. VAN DYKE replied, that for the United States in the case of the United States *vs.* Passmore Williamson, he desired to propound a question he had drawn up.

The Judge directed Mr. Van Dyke to submit the interrogatory to respondent's counsel, which was accordingly done.

This interrogatory was submitted in writing.

Mr. GILPIN said Mr. Williamson was perfectly willing to answer the interrogatory submitted by the District Attorney, but as he did not know what other interrogatories might follow this, he thought it best that it and its answer should be filed.

Mr. VAN DYKE said he was willing to file the interrogatory, or to submit it for immediate reply.

Mr. GILPIN and Judge KANE both remarked that they had understood the District Attorney to intimate that if the question was answered in the affirmative, he would be satisfied. The Court further said, that it was for the Petitioner to make his election whether or not the interrogatories and the replies should be filed.

After consultation, the counsel of Mr. Williamson elected to have the interrogatories and answers filed, and Mr. Van Dyke accordingly filed the interrogatory, which was as follows :—

INTERROGATORY.

United States *vs.* Passmore Williamson, Nov. 3d, 1855. And now, James C. Van Dyke, attorney for the United States, by leave granted, files the following interrogatory :—

Interrogatory.—Did you, at the time of the service of the writ of habeas corpus, at the relation of John H. Wheeler, or at any time during the period intervening between the service of said writ and the making of your return thereto, seek to obey the mandate of said writ, by bringing before this Honorable Court the persons of the slaves therein mentioned ?

If to this interrogatory you answer in the affirmative, state fully and particularly the mode in which you sought so to obey said writ, and all that you did tending to that end.

And therefore, it is ordered that the defendant, Passmore Williamson, do make true answers to said interrogatories.

Mr. WILLIAMSON and his counsel then retired. After a brief absence from the Court room, they returned, and Mr. Gilpin read a reply.

Mr. VAN DYKE objected to the form of the answer. It was evasive, he contended, and was not a simple positive "yea" or "nay" to the query propounded.

Judge KANE said the answer was liable to exceptions, but he thought the same matter might be so expressed as to relieve the answer from all objections.

That the answer to the first clause was a distinct negative, but the party had a perfect right to expand the answer, and make such explanations as he deemed necessary.

The Judge was of opinion that the answer to the second clause might also be coupled with an explanation. If the defendant were to reply simply "No," to the second clause, he then might be charged with contempt in not seeking to obey the mandate of the Court, and he had a right to explain that he thought it useless to make such search.

The counsel of Mr. Williamson then amended the answer so as to read as follows :—

ANSWER OF DEFENDANT.

I did not seek to obey the writ by producing the persons therein mentioned before the Court, because I had not, at the time of the service of the writ, the power over, the custody or control of them, and therefore it was impossible for me to do so. I first heard of the writ of habeas corpus on Friday, July 20th, between 1 and 2 o'clock, A. M., on my return from Harrisburg. After breakfast, about 9 o'clock, I went from my house to Mr. Hopper's office, when and where the return was prepared.

At 10 o'clock I came into Court as commanded by the writ. I sought to obey the writ by answering it truly ; the parties not being in my possession or control, it was impossible for me to obey the writ by producing them. Since the service of the writ I have not had the custody, possession or power over them ; nor have I known where they were, except from common rumor or the newspaper reports in regard to their public appearance in the city or elsewhere.

Mr. Van Dyke objected to this reply, as it was in his opinion evasive. The respondent is asked to state whether at any time since the service of the writ and the return thereto, he has sought to obey its mandates, and then to state, too, in what manner he did seek to obey it. That the answer was defective. That the answer was not in the terms of the interrogatory, and is, therefore, not a clear, full, and unevasive answer. He asked that the interrogatory be again propounded to the respondent to answer it directly, one way or the other, in the terms of the interrogatory ; first, whether he did seek to obey the mandate of the writ, and if so, then to state to the Court the manner in which he sought to obey its mandates. That there can be no misapprehension as to the meaning of the terms he had used in the interrogatory. The answer should be yea or nay ; if yea, then how ; if nay, there is an end to the question. If the terms of the interrogatory were not definite, it was the duty of the defendant's counsel to object to them and let them be amended.

Mr. Gilpin said, he did not understand that where an interrogatory was put to a party before the Court, with a view to purge himself, or elicit further information, the contents of the return were to be answered simply yea or nay, without being permitted, in connection with the answer, to give facts explanatory of the yea or nay, and to inform the Court of the facts ; and if, therefore, a defective form of inquiry be used in the interrogatory, it is not for the respondent, placed in a very peculiar position, to correct the terms of the interrogatory. If the interroga-

tory be defective, by the ordinary rule of pleading, the party first in default must go back again, and correct his error.

Mr. VAN DYKE offered to alter the form of the interrogatory, but Mr. Gilpin said it had not yet been objected to.

Mr. GILPIN continued, and said that two questions had been propounded.

First, as to whether the defendant had sought to obey the writ; and secondly, *how*. If the answer was full, it was only such as was necessary to explanation. If the reply was not responsive, it was not for the want of an honest effort to make it so. The desire not to evade was at least evident.

The Judge said that his impression was that a direct answer could be given thus:—"I did not, at the time indicated in the first branch of the question, seek to obey the mandate of the writ by bringing into Court the persons of the slaves therein mentioned, *because*, &c." And "I did not so seek, *because*, &c."

Mr. MEREDITH said the difficulty arose from the ambiguity about the word "seek." He could not see what answer the defendant could make other than that offered. He had no control over the slaves. He explains so, and gives a direct answer to the question asked him.

The Judge said he was as anxious as any one to throw no unnecessary difficulty in the way of the settlement of this matter. The District Attorney had a right to explain his meaning for the word as he had applied it.

Mr. MEREDITH said he would suppose a case. Suppose a person were commanded to produce the body of a person he never saw. How could he reply to the question, "Did you seek for him?"

Judge KANE said the reply proper in such a case would be, "I did not seek, because," &c.

Mr. VAN DYKE said he took the dictionary meaning of the word "seek." If it were necessary to add the definitions of Walker and other lexicographers, he would do so. He defined the word as he understood its meaning.

Judge KANE again repeated the opinion that if there is anything equivocal about the interrogatory the defendant should say so. If it was not equivocal, he should answer directly in the affirmative or negative, and add his reasons for doing so.

The Judge said the difficulty, he thought, could be easily overcome by amending the answer, and at the suggestion of the Court it was amended in the following manner:

"I did not seek to obey the writ by producing the persons in the writ mentioned before this Court.

"I did not so seek, because I verily believed that it was entirely impossible for me to produce the said persons agreeably to the command of the Court."

The answer was then accepted by the Court, and ordered to be filed.

Mr. VAN DYKE then submitted another interrogatory, the effect of which was to inquire of Mr. Williamson whether or not he had made any mental reservation in the answer already made to the interrogatory propounded.

The Judge, without waiting for any objection to this interrogatory, overruled it, saying he considered it objectionable. The answer of the defendant must be taken as a matter of course, and no inquiry could be made such as that contemplated by the interrogatory.

Mr. VAN DYKE then withdrew the interrogatory.

Mr. V. then offered another interrogatory, which was also overruled, as it tended to elicit such replies as had already been objected to by the District Attorney.

Mr. VAN DYKE also withdrew this question.

Judge KANE then remarked that the District Attorney had been invited to aid the Court in this case, but that he would bear in mind that his relation to Mr. Wheeler was now suspended. This was only an inquiry as to what injury had been done the process of the Court.

Mr. VAN DYKE said he was aware of the position he occupied.

Judge KANE then said :—"The contempt is now regarded as purged and the party is released from custody. He is now reinstated to the position he occupied before the contempt was committed. Mr. Williamson is now before me on the return to the writ."

Mr. VAN DYKE then stated that suit had been brought in the United States Circuit Court by his client against Passmore Williamson, and as he (Mr. Van Dyke) appeared in a different character, he would read from a paper (which he drew from his pocket) the remarks he had to make in reference to the habeas corpus.

In the case of the United States *ex relatione* John H. Wheeler *vs.* Passmore Williamson.

Mr. Williamson being now, by his purgation, reinstated in the standing before this Honorable Court which he occupied immediately preceding the time when he was guilty of the contempt, for which he was committed on the 27th of July last, I have, in connection with my colleague, Mr. Webster, to suggest, that Mr. Wheeler, at whose relation this writ of habeas corpus had been issued, was, at the time he filed his petition,

in hopes that the remedial process of this Court would not have been evaded or disregarded by Mr. Williamson, but that he would have cheerfully, by an endeavor to obey that writ, sought an adjudication of the highest judicial tribunal of the country, of the questions, Whether Mr. Wheeler was entitled to pass over the soil of Peensylvania with his property? and whether or not a wrong had been committed in the forcible abduction thereof? He also, for some time subsequent to the return to said writ, indulged the hope that, upon reflection, Mr. Williamson would yield a proper submission to the constitutional sovereignty of existing law by rendering obedience to the orders of this Court, and submitting in proper form to legally constituted authority, all matters of dispute between the parties.

But in this hope he has been deluded. His remedy was, at an early period of the proceedings in this case, arrested by the contumacious disregard on the part of the defendant of the lawful process of this Court, and having waited for a reasonable time for him to ask leave to purge his contempt, in order that he might further pursue the remedies afforded by reason of the writ of habeas corpus, and finding that the defendant was controlled, as this relator believed, by a pertinacity in violation of his duty, and injurious to the rights of the relator, he determined to institute a suit in another branch of the Courts of the United States, for the recovery of damages which have accrued by the tortious acts of the defendant towards his person and property, and a suit for this purpose has been commenced in the Circuit Court of the United States for this Circuit, and will be duly prosecuted, with the hope that it may afford a more ample remedy to Mr. Wheeler than he has been enabled to obtain by the present proceeding. It was instituted as soon as it became apparent that owing to the evasion of the process of this Honorable Court it was impossible for Mr. Wheeler to repossess himself of his property by the aid afforded by the writ of habeas corpus, which he had invoked. He determined from that time to take no further part in these proceedings, leaving Mr. Williamson to atone to the Government of the United States, where such atonement properly belonged, for his offence against the sovereign majesty of her laws, and from that time neither he nor his counsel have had any part in the proceedings in the case of the United States *vs.* Passmore Williamson.

Mr. Wheeler regrets that the neglect and refusal of the defendant, which has induced him for so long a time to refuse obedience and a proper submission to this Court, has been a barrier to a previous announcement of his determination.

In addition to this, Mr. Wheeler will be able to prove all the impor-

tant points of his case in the Circuit Court, which renders unnecessary any information that he might at this stage of the proceedings gain by true answers to such interrogatories as by law he is allowed to propound. He, therefore, respectfully waives his right in this respect, placing a firm reliance on the laws of the land and a jury of his country to repair the injury which he has suffered at the hands of the defendant and his confederates.

After Mr. Van Dyke had concluded, Mr. Meredith inquired—"Is Mr. Williamson discharged?"

Judge KANE replied—"He is. I understand from the remarks of the District Attorney that a *nolle prosequi* has been entered in the case, in this Court."

The Court then adjourned. Mr. Williamson was congratulated by his friends on his restoration to liberty.

APPENDIX.

PROCEEDINGS UPON THE PETITION OF JANE JOHNSON.

United States District Court, Eastern District of Pennsylvania.

On the third day of October, 1855, JANE JOHNSON, by her attorneys, JOSEPH B. TOWNSEND and JOHN M. READ, Esqs., presented the following petition:

The United States of America,
Ex rel. JOHN H. WHEELER,
vs.
PASSMORE WILLIAMSON.
} *Alias Habeas Corpus.*

To the Honorable John K. Kane, Judge of the aforesaid Court.

The suggestion and petition of Jane Johnson, respectfully showeth, that she is one of the three parties named in the aforesaid writ of habeas corpus, and the mother of the two children, Daniel and Isaiah, also named therein, and thereby required to be produced. That before the occurrences hereinafter stated, this petitioner and her said two children lived in Washington, in the District of Columbia, and were claimed and held by the said John H. Wheeler as his slaves, according to the laws and usages of that District. That on the 18th day of July, 1855, the said John H. Wheeler voluntarily brought your petitioner and her two children from the City of Washington to the City of Philadelphia, passing through Baltimore and reaching Philadelphia by way of the Philadelphia, Wilmington and Baltimore Railroad. Mr. Wheeler stopped at Bloodgood's Hotel, in Philadelphia, at the foot of Walnut street, and fronting on the Delaware River, and remained there with your petitioner and her said two children, from about two o'clock, P.M., until shortly before 5 o'clock, P.M., when he directed your petitioner to bring her children and accompany him on board a steamboat belonging to the railroad line to New York, which boat was then being attached to the pier in front of the said hotel, which direction was complied with, and your petitioner seated herself with her said two children on the upper deck of the said boat, near Mr. Wheeler. Your petitioner was very desirous of procuring the freedom of herself and her children, and before she left Washington determined to make an effort to do so, if said

Wheeler should take her North. While stopping at the hotel as aforesaid, Mr. Wheeler went to dinner, and while your petitioner was absent from his presence, she informed one of the waiters at the said hotel (a colored woman) that she and her children were slaves. A few minutes before 5 o'clock, while said Wheeler, your petitioner and her children were on the upper deck of the steamboat as aforesaid, a white gentleman, whose name your petitioner has since been informed is Passmore Williamson, approached your petitioner and informed her that she was free if she chose to claim her liberty, and asked her if she desired to be free. Your petitioner replied that she did wish to be free, as in truth and in fact she did; and said Williamson then further informed your petitioner that if she wished her liberty, she could go ashore and take her children with her, and that no one had a right to prevent her doing so; but that she must decide promptly whether she would go or stay, as the boat would soon start.

Your petitioner being desirous to go on shore, rose to go, and was taken hold of by said Wheeler, who urged her to stay with him, but your petitioner refused to stay, and voluntarily and most willingly left the boat, aided in the departure by several colored persons, who took her children, with her consent, and led or carried them off the boat, and conducted your petitioner and her said children to a carriage, a short distance from the boat, which carriage they entered and went away. Mr. Williamson did not accompany the colored persons who were assisting your petitioner to get away, but remained some distance behind, and your petitioner has never seen him since she left the steamboat as aforesaid.

Your petitioner further states that she was not, at the time of her leaving Mr. Wheeler, as aforesaid, or at any time since, in any way or manner whatever, in the custody, power, possession or control of Mr. Williamson, nor has she received from him any directions or instructions, directly or indirectly, whither she should go. But claiming and believing that she and her children are free, your petitioner has, ever since her leaving said Wheeler, exercised her right as a free woman to go whither she pleased, and to take her said children, and has not since that time been restrained of her liberty by any person whatever.

Your petitioner is advised, and respectfully submits to your Honor, that the said writ of habeas corpus ought to be quashed under the facts above stated, and for the following among other reasons: First,—The said Wheeler had no control over or right to the possession of your petitioner or her said children at the issuing of the aforesaid writ, they being then free. Second,—Because the said writ was issued without

the knowledge or consent of your petitioner and against her wish. Third,—Because, in truth and in fact, at the issuing of the said writ, and at all times since your petitioner left the company of said Wheeler as aforesaid, neither she nor her said children have been detained or restrained of their liberty by said Williamson or any other person whatever. Fourth,—Because, under the writ of habeas corpus, which is a writ devised and intended to restore freemen to liberty when unduly restrained thereof, the said John H. Wheeler seeks to reclaim and recover your petitioner and her said children, and reduce them again into slavery.

Wherefore, your petitioner respectfully prays this honorable Court, that the said writ of habeas corpus and all proceedings under it, may be quashed, and especially that the said Passmore Williamson may be discharged from his imprisonment.

her
JANE ⋈ JOHNSON.
mark.

United States of America, District of Massachusetts. On this twenty-sixth day of September, A. D., 1855, the above named Jane Johnson personally appearing, made solemn oath that the facts stated in the foregoing petition, so far as they are within her own knowledge, are true, and all other facts therein stated she believes to be true, before me.

C. W. LORING,
Commissioner U. S. Court for the District of Massachusetts.

Upon the presentation of the petition, the Court intimated a doubt of the petitioner's having such *status* as would entitle her to be heard, and directed the counsel to address their remarks to that point. At the request of the counsel, Monday, Oct. 6th, was fixed by the Court for the argument, at which time, J. B. TOWNSEND, Esq., on behalf of the petitioner, addressed the Court as follows:

This application is on behalf of Jane Johnson, a party named in the writ and thereby required to be produced. The sole question now to be considered is, has she such *status* as will entitle her to intervene and ask the Court to quash the writ and the proceedings had under it?

As the record stands, the writ issued on the petition of John H. Wheeler, who avers that Jane and her children were his slaves according to the laws of Virginia, and that they were detained from his possession by Passmore Williamson, and that they were not detained for any crimi nal or supposed criminal matter.

The alias writ was served, and to it a return has been made by Mr Williamson denying wholly and in general terms, any detention or re

straint by him of the parties required by the writ, or either of them, or any custody or possession of, or control over them or either of them.

This return, ordinarily considered conclusive, this Court has permitted to be traversed, and has heard oral testimony both from Mr. Wheeler and Mr. Williamson, as also from other parties, as to its truth and sufficiency, and on the testimony *then* adduced, and as the case then stood, the Court has committed Mr. Williamson "as for a contempt of Court in refusing to make return to the writ," which, so far as I can gather it, means that, because the Court considered that the return was, by the testimony adduced, shown to be untrue, it must be considered as no return.

With the conclusion arrived at by the Court with the light *then* before it I have nothing to do. I do not in any way represent Mr. Williamson, nor has he, his friends or his counsel been consulted in regard to the present application. But the action of the Court was based upon certain facts which were considered as established by the evidence then before Court.

What I now ask is, that a party to the proceeding—the party most interested in it—the very party who was sought to be relieved from the alleged illegal custody or detention of Mr. Williamson, shall intervene in the manner allowed by courts of justice, that is, by petition, verified under oath, to declare her knowledge of the subject matter, to disclaim and repudiate this proceeding, which Mr. Wheeler can only maintain with her consent, and to deny all custody, detention or restraint over her on the part of Mr. W. or any other person, in order, if the Court shall receive her statement, that it may consider and decide as to whether it does not conclusively show the propriety of the return, and refute the truth of the supposed facts upon which the former action of the Court was based; because, I assume that neither the writ nor the commitment would be sustained if the matters set up by way of traverse to the return can be disproved by any party to the proceeding.

In this habeas corpus there are three parties: 1st, the relator; 2d, the party to whom the writ was addressed; and 3d, the party required by the writ to be produced.

The sole object of the writ of habeas corpus *ad subjiciendum* (which this is) is to relieve the party required to be produced, from alleged illegal and improper custody or restraint exercised by the party to whom the writ is addressed. The proceeding is an inquisition or examination on the part of the sovereign power through the judges of its courts, as to any restraint of the liberty of any human being against the will of the party restrained. It is a great prerogative writ in aid of the personal

liberty and freedom of the subject, and I submit, as a proposition which cannot be questioned, that the aim, object and end of the writ is the personal relief, favor and protection of the party alleged to be detained; it is in substance the writ of the party detained, and never issued or maintained without the consent of such party when of years of discretion.

It cannot be used as a means of trying a title or right of possession of persons, especially where there is no custody, actual or potential, by the party to whom addressed.

Is it to be supposed that every man to whom such a writ is addressed is bound, in answer to the writ, to bring in the body or make an effort to do so, when there is no actual or potential custody on his part, even though he might happen to know where the required party was at the time? No doctrine so unreasonable has ever been broached in a court of justice; if it were so, then the writ of habeas corpus would be a command to commit an assault and battery. See Linda *vs.* Hudson, 1 Cushing's Rep. 385.

I propose to cite some authorities to show how far the Courts in England have gone in recognizing that this writ requires for its support that there should be custody or restraint over the party required to be produced, and that such custody or restraint should be exercised *contrary to the will of such party;* and if the party required to be produced disclaims such custody, the writ cannot be maintained.

In Rex *vs.* Roddam, Cowp. 672, Lord Mansfield denied a habeas corpus because it was claimed without the consent of the parties who were sought to be produced, saying, "they can never be brought up as prisoners against their consent."

In the King *vs.* Reynolds, 6 Tenn. Rep. 497, an apprentice, eighteen years old, left his master and entered the sea service. His master petitioned for a habeas corpus to bring him up. Lord Kenyon denied the master's right to it, saying that the master had his remedy by action, but could not maintain a habeas corpus. The apprentice, who is of sufficient age to judge for himself, can apply for it if he wishes it.

To the same point is The King *vs.* Edwards, 7 Tenn. Rep. 741, which was a petition by a master for a habeas corpus to bring up his apprentice. The Court say that the distinction was properly taken in the last case, that the apprentice might obtain the writ, but the master could not, "for its object is the protection of the liberty of the party;" that the master was not without his remedy, but not in this form.

Exparte Lansdown, 5 East. 38, also an application by a master to bring up by habeas corpus an apprentice alleged to have been improperly taken from him, per Lord Ellenborough: "The writ of habeas corpus is for

he protection of the personal liberty of the subject. If the party himself, being of competent years of discretion, do not complain, we cannot issue the writ on the prayer of the master, who has remedy by action, if his apprentice be improperly taken from him.

Ex parte Sandilands, 12 Eng. Com. Law and Eq. Reps. 463, where a wife is voluntarily and witnout any restraint absent from her husband, a Court of common law has no jurisdiction, upon his application, to issue a habeas corpus to bring her up.

The King *vs.* Wiseman, 2 Smith's Reps. 617, is to the same effect.

I cite these cases to show that it is the rights and liberties of Jane Johnson and her children that this Court is charged with protecting in this proceeding, and not the rights of Mr. Wheeler. If he has suffered injury, the law is open to him for redress, but not in this form.

It being therefore virtually her proceeding, why cannot she terminate it and declare that it was vicious from its inception for want of her assent to it? Why cannot she be heard? Have not both the other parties had their hearing?—Mr. Wheeler in support of his claim, Mr. Williamson in support of his return. It seems to me that if any party to the proceeding can be heard, my colleague and myself represent that very party, the sole question being whether there is any detention or restraint of this woman against her will. Surely no one is so competent to satisfy the Court upon that point as the woman herself; her declaration is the best evidence attainable, all others being but secondary.

There is a long and uninterrupted current of decisions, both in England and this country, establishing that it is the practice of Courts to learn from the parties required to be brought up, whether there is any detention of or restraint over their persons contrary to their wish, and to receive for this purpose either their affidavits or oral testimony; and if this element be wanting, the writ and all proceedings under it must be quashed. Some of these cases are:

Rex *vs.* Viner, 2 Levinz, 128; Rex *vs.* Clarkson, 1 Strange, 444; Rex *vs.* Smith, 2 Strange, 982; Rex *vs.* Clark, 1 Burr., 606; Rex *vs.* Mead, 1 Burr. 542; Rex *vs.* Delaval, 3 Burr. 1434; Anne Gregory's case, 4 Burr. 1991; Ex parte Hopkins, 2 Peere Wms. 152; in re Spence, 2 Phillips, Ch. cases, 253; in re Parker, the Canadian prisoner's case, 5 Mees and Wel. 32; ex parte Woolstoncraft, 4 John Ch. Rep. 80; and the Pennsylvania cases of Com. *vs.* Robinson, 1 Sergt. and R. 353, and Com. *vs.* Addicks, 5 Binney, 520.

The practice of the Court of Common Pleas of this County I am sure has always conformed to this rule, and if the Court can learn from the party whose body is required to be produced, that he or she is ex-

ercising a free will in the disposal of himself or herself, there is an end of all proceeding under the writ, the only exception to this rule being the case of infants of such tender years that they cannot exercise a choice in the matter. But in the case of ex parte Woolstoncraft above cited, the Court received the declaration of the infant, who was only fourteen years of age.

It is this declaration that we now present, and ask the Court to receive and consider; and I submit that the precedents for this course are uniform and abundant.

Whether the Court shall consider that the freedom or slavery of Jane Johnson is to affect her right to be heard here, I do not know; but if it is to have any bearing upon the matter now before the Court, we contend that being brought here by her former master of his own free will, she became a free woman within the territory of Pennsylvania; but by arrangement between my colleague and myself, and that we may not travel wholly over the same ground, the discussion of this question is to be left with him, and I leave it with the simple statement of the position we take on this question.

There are two cases which I wish to furnish to this Court which are well worthy of consideration upon the question of the right of possession of an alleged slave being considered or decided upon in a habeas corpus. The first is, the State *vs.* Frazer, Dudley's Reps. (Georgia) p. 42, and the second is Nations *vs.* Alois, 5 Smede and Marsh, (Mississippi) p. 338. In the first case the Superior Court of Georgia refused to pass upon or decide the right to the possession of a negro woman claimed as a slave, under habeas corpus, on the ground that this writ was for the personal liberty of the subject, and the only question to be considered was whether there existed any detention or restraint of the negro against her will.

In the second case, the question arose upon an act of the Legislature of Mississippi, which allowed, at the instance of the master, a writ of habeas corpus, when his slaves had been taken from him by fraud, force or violence. Certain slaves had been fraudulently taken from their owner in Tennessee and brought into the State of Mississippi. A habeas corpus was taken out by their master, and the Court held that the acts which the statute required as necessary to the maintenance of the writ having occurred in another State, the writ could not lie. The case was ably argued and well considered by the Court, and I cite it to show that it was never suggested, either by Court or counsel, that the writ could be supported at common law for the recapture or restitution of the slaves to their master.

It is not now the time to discuss the questions which may arise if the Petition shall be received by the Court, but I earnestly desire that the Court should understand that I am here, not on behalf of Mr. Williamson, nor by his means or procurement in any way; he is represented by counsel much better able than I am to protect his interests. But having received this petition from the party whose rights and interests are mainly involved in the proceeding, and believing that under the authorities and practice of the Courts it was proper to be presented to the Court, we claim the right to do so, and to ask the redress it prays for, and we respectfully submit that in receiving and entertaining this application, the Court will be administering justice according to the due course of law.

Mr. TOWNSEND was then followed by Mr. READ.

Mr. READ said that the question was upon the reception of the petition. He only asked that it should be filed, so that the party could be heard at this stage of the proceedings. It is a general principle that the writ of habeas corpus must always be *issued by or on behalf of the party whose liberty is restrained.* It was known that there were three kinds of writs of habeas corpus in England—one under the statute of Charles I., one of 56th Stat. of George III., and one at the Common Law. That the writ in this case must be one at common law, not specially restrained by any statute.

Mr. R. referred then to the case of ex parte Siriderlisi, 12 En. L & E., page 63, and to 29 Law and Equity 259—in the case of a lunatic, wherein the rule to show cause why a habeas corpus should not issue to bring up his body was dismissed because the party had not made any application to the Court, nor was it shown that he was so coerced as to prevent his doing so.

The law is clearly stated by Chitty, vol. 1, pages 684 and 687, English edition. He then read the law as laid down and compiled by the commentator. He argued from the synopsis in the books that the principle laid down was a fair and legal one. All the acts tend only to protect the liberty of the subject—and the title of the acts absolutely prove it. The writ is one of privilege; it is for a party restrained to issue it, and not for a party wishing to restrain another, and Mr. R. cited the Constitution of the United States and the Bill of Rights of the State of Pennsylvania to sustain the position.

The case of an infant to whose custody the father was entitled, was referred to. In the case of an apprentice, he said that against his will no master can call him on a writ of habeas corpus. The master has

another remedy—he cannot use the habeas corpus to decide a question of property. Mr. R. referred to the case decided by Judge Rogers in 1848, in Com. vs. Roberts, and to 7 Pa. Law Journal, Com. against Harris, which was a habeas corpus to bring up the body of a minor who had been an apprentice, and had enlisted. The Court would not remand the apprentice to the custody of the master, leaving him to his suit for damages against the officer who enlisted the apprentice.

The writ issued by this Court in Williamson's case, was a writ of habeas corpus at common law, and must be so regarded. He cited from the discussions of the Law Reformation Society, of which Lord Brougham is the head, and handed the book of the proceedings of the Society to the Court—not endorsing all the sentiments therein contained, but only using it for the purpose of the present case. He then read at some length from the book referred to, the essay upon the writ of habeas corpus. He cited the case decided by Lord Chancellor Cottingham, *in re* Spence, 2 Phillips' Chancery cases, page 252, and followed and quoted from 3 Stephens' Black. 756, and 7 Barr 336; to the same purpose 3d Hallam was cited and commented on, and the act of 18th September, 1850, the fugitive slave law.

Another important branch of the case worthy of special notice is, that Jane Johnson claims that her children are free. That was a matter for the determination of the Court.

That from some causes or other, necessity, and sometimes from a much smaller reason, these States had made it an offence to bring a free colored man into the slave States, or to keep one there.

He cited the laws of South Carolina, 7th vol., under the head of Acts relating to the State, 20th Dec. 1800, which was "An Act to prevent the introduction of any slaves or keeping them in the State." One section of this act allows the right of migration under certain limits. On the 19th Dec. 1801, another act of the same Legislature, bearing on the case, was passed. It provided that any negro coming into the State should be sold, and that persons bringing such negroes into the State must exculpate themselves.

The act of 18th December, 1802, provided for the migration of slaves and the allowance of their transit through the State, upon the deposit of a declaration of intention to that effect in the County Clerk's office, by the person wishing to so transport them.

He then read the act of 17th December, 1803, and the act of 19th Dec. 1816, entitled "An act to prohibit the importation of slaves from any State," &c., and the act of Dec. 19th, 1835. Passing, then, from the State of South Carolina, he quoted the Act of Assembly of the

State of Georgia of the same date, almost the same in terms as the act of the former State. In North Carolina, an act was passed which was almost unintelligible—he read from the digest the law in relation to the introduction of any colored person into that State and the punishments attached to doing so. It was a prohibitory statute, and a penalty was also attached to it. He then read the habeas corpus act of North Carolina, and spoke of the laws of Maryland and Virginia.

The policy of these States was entirely to exclude negro slaves brought there unless under the restrictions mentioned. In 1840, the people of Kentucky held a convention and reiterated the conditions of the Constitution of 1793. The remarks of some of the distinguished Kentuckians at that convention were quoted.

The Southern States have always assumed plenary power; they have stood for the doctrine of State rights, that what is not given is withheld; that the powers not delegated to the Union are withheld by the State itself, and are by it to be exercised. This brings me to the question of the *status* of Jane Johnson. The State of Pennsylvania, like other States, formerly held slaves within her borders—an unchristian practice as many of her citizens have always regarded it. There were but few slaves here in comparison to the resources or population of our State. In 1780 the act for the gradual abolition of slavery was passed. It was passed in spite of opposition from those who doubted its policy.

This act, (or the 10th section of it,) to which the attention of the Court was specially directed, was read, and at much length and with great force of reasoning commented on by the learned counsel. He stated that he never yet had felt (unless when travelling with children) the necessity of having a personal servant with him. He believed that a man, if put to it, might even brush his own coat or black his own boots—or he might procure those services to be done for him by persons employed for the purpose at any hotel. Where, then, was the necessity of having a personal attendant to travel with you?

In 1786, the Legislature chose to amend the act, fearing its abuse—in this State the law remained until the year 1847—certainly with great benefit to the persons of color, for the mere making a man free may not make him better;—this takes time. Here the benefit which has been derived from the act is manifest to every one who can recollect the condition of the negroes then and compare that with their present situation.

He spoke of the unanimous feeling occasioned by the application of Missouri for admission to the Union in the years 1817 and 1818. In 1846, the admission of Texas, resolved on by two administrations, came up for its consideration. It was the first time we were called upon to

admit to the Union an organized body of men as a State. True, we had purchased territory from France and Spain, but then we could do what we pleased with it. The line of 36 deg. 30 min. was run through Texas; all north of that line was to be free.

That Jane Johnson never consented to the issuing of the habeas corpus in this case. He then cited the case of Straighter and Graham, 10 Howard, U. S. Supreme Court Reports. It decides that the Courts of the State (Kentucky) had the right to decide the *status* of a person on its own territory, and remarked that—

"If a man allows his slave to go to a free State and reside there, and then takes him back to a slave State, he places himself in the position of introducing a free person of color to that State, and is liable to be mulcted under the laws of the State."

He adverted to the correspondence between Mr. Webster and Lord Ashburton—in which Mr. W. admits that a slave escaping into Canada is free—and the present position of England was adverted to. In the revolutionary war, England did not cause a servile insurrection in this country, because then she was committed to the policy of slavery. She is not so now, and what would be the consequence were a war to occur between the two countries?

If Jane Johnson was a free woman, she should have been a party to the writ. She was not so—she now petitions, as a free woman, and we ask that the petition shall be filed. After so filing, the disposition of it is a matter of argument.

He said that under any aspect, the name of Jane Johnson having been introduced in the writ of habeas corpus, she has a right to be heard in this Court.

On Friday, October 12th, Judge KANE delivered his opinion:—

KANE, J.—Before entering upon the question immediately before me at this time, it is proper that I should advert to the past action of this Court in the case of Passmore Williamson, and to the considerations that led to it. I do this the rather, because in some of the judicial reviews to which it has been submitted collaterally, after an ex parte argument, it does not seem to me to have been fully apprehended.

I begin with the writ which originated the proceeding.

The writ of habeas corpus is of immemorial antiquity. It is deduced by the standard writers on the English law from the great charter of King John. It is unquestionable, however, that it is substantially of

much earlier date; and it may be referred, without improbability, to the period of the Roman invasion. Like the trial by jury, it entered into the institutions of Rome before the Christian era, if not as early as the times of the republic. Through the long series of political struggles which gave form to the British Constitution, it was claimed as the birthright of every Englishman, and our ancestors brought it with them as such to this country.

At the common law, it issued whenever a citizen was denied the exercise of his personal liberty, or was deprived of his rightful control over any member of his household, his wife, his child, his ward, or his servant. It issued from the Courts of the sovereign, and in his name, at the instance of any one who invoked it, either for himself or another. It commanded, almost in the words of the Roman edict,* that the party under detention should be produced before the Court, there to await its decree. It left no discretion with the party to whom it was addressed. He was not to constitute himself the judge of his own rights or of his own conduct; but to bring in the body, and to declare the cause wherefore he had detained it; and the judge was then to determine whether that cause was sufficient in law or not. Such in America, as well as England, was the well known, universally recognized writ of habeas corpus.

When the Federal Convention was engaged in framing a constitution for the United States, a proposition was submitted to it by one of the members, that "the privileges and benefits of the writ of habeas corpus shall be enjoyed in this government in the most expeditious and ample manner; and shall not be suspended by the legislature except upon the most urgent and pressing occasions."† The committee to whom this was referred for consideration, would seem to have regarded the privilege in question as too definitely implied in the idea of free government to need formal assertion or confirmation; for they struck out that part of the proposed article in which it was affirmed, and retained only so much as excluded the question of its suspension from the ordinary range of congressional legislation.

The convention itself must have concurred in their views; for in the Constitution, as digested, and finally ratified, and as it stands now, there is neither enactment nor recognition of the privilege of this writ, except as it is implied in the provision that it shall not be suspended. It stands then under the Constitution of the United States, as it was under the

* "De libero homine exhibendo" D. 43. T. 29.

† See the Madison papers, Vol. I.

common law of English America, an indefeasible privilege, above the sphere of ordinary legislation.*

I do not think it necessary to argue from the words of this article, that the Congress was denied the power of limiting or restricting or qualifying the right, which it was thus forbidden to suspend. I do not, indeed, see that there can be a restriction or limitation of a privilege which may not be essentially a suspension of it, to some extent at least, or under some circumstances, or in reference to some of the parties who might otherwise have enjoyed it. And it has appeared to me, that if Congress had undertaken to deny altogether the exercise of this writ by the federal courts, or to limit its exercise to the few and rare cases that might per-adventure find their way to some one particular Court, or to declare that the writ should only issue in this or that class of cases, to the exclusion of others in which it might have issued at the common law, it would be difficult to escape the conclusion, that the ancient and venerated privilege of the writ of habeas corpus had not been in some degree suspended, if not annulled.

But there has been no legislation or attempted legislation by Congress, that could call for an expansion of this train of reasoning.

There was one other writ, which, in the more recent contests between the people and the king, had contributed signally to the maintenance of popular right. It was the writ of scire facias, which had been employed to vindicate the rights of property, by vacating the monopolies of the crown. Like the writ of habeas corpus, it founded itself on the concessions of Magna Charta; and the two were the proper and natural complements of each other.

The first Congress so regarded them. The protection of the citizen against arbitrary exaction and unlawful restraint, as it is the essential object of all rightful government, would present itself as the first great duty of the courts of justice that were about to be constituted. And if, in defining their jurisdiction, it were thought proper to signalize two writs, out of the many known to the English law, as within the unqualified competency of the new tribunals, it would seem natural that those two should be selected, which boasted their origin from the charter of English liberties, and had been consecrated for ages in the affectionate memories of the people as their safeguard against oppression.

This consideration has interpreted for me the terms of the statute,

* "The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it." Const. U S. Art. 1, § 9, par. 1.

which define my jurisdiction on this subject. Very soon after I had been advanced to the Bench, I was called upon to issue the writ of habeas corpus, at the instance of a negro, who had been arrested as a fugitive from labor. It was upon the force of the argument, to which I now advert, that I then awarded the process; and from that day to this, often as it has been invoked and awarded in similar cases that have been before me, my authority to award it has never been questioned.

The language of the act of Congress reflects the history of the constitutional provision. It enacts (*First Congr., Sess.* 1, *ch.* 20, *sec.* 14) "that all the before mentioned Courts of the United States" (the Supreme, Circuit and District,) "shall have power to issue writs of scire facias, habeas corpus and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions and agreeable to the principles and usages of law."

I am aware that it has sometimes been contended or assumed, without, as it seems to me, a just regard to the grammatical construction of these words, that the concluding limitation applies to all the process of the Courts, the two writs specially named among the rest; and that the federal Courts can only issue the writ of habeas corpus, when it has become necessary to the exercise of an otherwise delegated jurisdiction; in other words, that it is subsidiary to some original process or pending suit.

It is obvious, that if such had been the intention of the law-makers, it was unnecessary to name the writ of habeas corpus at all, for the simpler phrase, "*all writs* necessary, &c." would in that case have covered their meaning. But there are objections to this reading more important than any that found themselves on grammatical rules.

The words that immediately follow in the section, give the power of issuing the writ to every judge, for the purpose of inquiring into the causes of a commitment. Now, a commitment presupposes judicial action, and this action it is the object of the writ to review. Can it be, that a single judge, sitting as such, can re-examine the causes of a detainer, which has resulted from judicial action, and is therefore *prima facie* a lawful one; and yet that the Court, of which he is a member, cannot inquire into the causes of a detainer, made without judicial sanction, and therefore *prima facie* unlawful?

Besides, if this were the meaning of the act, it might be difficult to find the cases to which it should apply. I speak of the writ of *habeas corpus ad subjiciendum*, the great writ of personal liberty, referred to in the constitution; not that modification of it which applies specially to the case of a commitment, nor the less important forms of habeas

corpus, *ad respondendum*, *ad faciendum*, *&c.*, which are foreign to the question. I do not remember to have met a case, either in practice or in the books, where the writ *ad subjiciendum* could have performed any pertinent office in a pending suit. There may be such, but they do not occur to me: and I incline very strongly to the opinion, that if the power to issue the writ of habeas corpus applies only to cases of statutory jurisdiction, outrages upon the rights of a citizen can never invoke its exercise by a federal court.

If such were indeed the law of the United States, I do not see how I could escape the conclusion, that the jealousy of local interests and prejudice, which led to the constitution of federal Courts, regarded only disputes about property; and that the liberty of a citizen, when beyond the State of his domicil, was not deemed worthy of equal protection. From an absurdity so gross as this, I relieve myself by repeating the words of Chief Justice Marshal, in *ex parte Watkins*, 3 Pet. 201: "No law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the Court over the party brought up on it."

Whether, then, I look to the constitution, and its history, or to the words or the policy of the act of Congress, I believe that it was meant to require of the Courts of the United States, that they should dispense the privileges of the writ of habeas corpus to all parties lawfully asserting them, as other Courts of similar functions and dignity had immemorially dispensed them at the common law. The Congress of 1789 made no definition of the writ, or of its conditions, or effects. They left it as the constitution left it, and as it required them to leave it, the birthright of every man within the borders of the States; like the right to air, and water, and motion, and thought, rights imprescriptible, and above all legislative discretion or caprice.

And so it ought to be. There is no writ so important for good, and so little liable to be abused. At the worst, in the hands of a corrupt or ignorant judge, it may release some one from restraint who should justly have remained bound. But it deprives no one of freedom, and divests no right. It could not give to Mr. Wheeler the possession of his slaves, but it might release them from the custody of a wrong-doer. Freemen or bondsmen, they had rights; and the foremost of these was the right to have their other rights adjudicated openly and by the tribunals of the land. And this right, at least, Mr. Wheeler shared with them; he also could claim a hearing.

Unless these views are incorrect throughout, the District Court had jurisdiction of the case, which came before it at the instance of Mr. Wheeler. He represented in substance, by his petition under oath,

that three human beings had been forcibly taken possession of by Passmore Williamson, without authority of law, within the Eastern District of Pennsylvania; and he prayed, that by force of the writ of habeas corpus, Mr. Williamson might be required to produce their bodies before the Court, and to declare what was the right or pretext of right, under which he claimed to detain them.

Whether Mr. Wheeler was in fact entitled to demand this writ, or whether upon a full discussion of the law the Court might have felt justified in refusing it to him, is a question of little moment. Every day and in every Court, writs issue at the instance of parties asserting a grievance, and very often when in truth no grievance has been sustained. The party assailed comes before the Court in obedience to its process. He perhaps questions the jurisdiction of the Court. Perhaps he denies the fact charged. Perhaps he explains that the fact, as charged, was by reason of circumstances a lawful one. The judge is not presumed to know beforehand all the merits of the thousand and one causes that come before him: he decides when he has heard. But the first duty of a defendant, in all cases, is obedience to the writ which calls him into Court. Till he has rendered this, the judge cannot hear the cause, still less pass upon its merits.

Mr. Williamson came before the Court; but he did not bring forth the bodies of his alleged prisoners, as the writ had commanded him. He did not question the jurisdiction of the Court: he did not assert that the negroes were free, and that the writ had been applied for without their authority or consent: but he simply denied that they had ever been in his custody, power or possession, as Mr. Wheeler asserted.

Witnesses were heard, and, with one consent, they supported the allegation of Mr. Wheeler, and contradicted the denial of Mr. Williamson.

Mr. Williamson's counsel then asked time to enable them to produce witnesses who were material on his behalf; remarking that their client might desire to bring the negroes into Court, to prove that they had not been abducted. The judge informed them, in reply, that upon Mr. Williamson making the customary affidavit that there were material witnesses whom he wished to adduce, the cause would be continued, as of course, till a future day. Mr. Williamson declined making the affidavit.

He however asked leave to declare for himself what he had done, and why. He was heard, and, speaking under solemn affirmation, he not only verified all the important facts that had been sworn to by Mr. Wheeler and the witnesses, but added that immediately before coming into Court with his return, he had called upon a negro who had been

his principal associate in the transaction, to ascertain whether the negroes were "safe," and had been informed by him that they were "all safe."

Two motions were then made by Mr. Wheeler's counsel; the first, that Mr. Williamson should be committed for a contempt of process, in that he had made a false return to the writ; the second, that he should be held to answer to a charge of perjury. He summed up the evidence, and referred to authorities in support of these motions. The counsel of Mr. Williamson then asked leave to consult together as to their appropriate course of action; and this being assented to by the Court, they retired with their client for the purpose, from the Court room. Returning after some time, they informed the Court that they declined making any argument upon the questions which were before it.

The case, which was in this manner thrown upon the Court for its unaided adjudication, had assumed an aspect of grave responsibility on the part of Mr. Williamson. It was clearly in proof that the negroes had been removed by persons acting under his counsel, in his presence, and with his co-operation: his return to the writ denied that they had ever been within his possession, custody, or control. Under ordinary circumstances, this denial would have been conclusive; but being controverted by the facts in evidence, it lost that character. "The Court," said Judge Story, in a case singularly analogous in its circumstances, (*U. S.* vs. *Green*, 3 Mas. 483,) "will not discharge the defendant, simply because he declares that the infant is not in his power, possession, control or custody, if the conscience of the Court is not satisfied that all the material facts are fully disclosed. That would be to listen to mere forms, against the claims of substantial justice, and the rights of personal liberty in the citizen. In ordinary cases, indeed, such a declaration is satisfactory and ought to be decisive, because there is nothing before the Court upon which it can ground a doubt of its entire verity, and that in a real and legal sense the import of the words "possession, power, or custody," is fully understood and met by the party. The cases of the *King* vs. *Vinton*, 5 T. R., 89, and of *Stacey*, 10 Johns. 328, show with what jealousy, Courts regard returns of this nature. In these cases, there was enough on the face of the returns to excite suspicions that more was behind, and that the party was really within the constructive control of the defendant. Upon examining the circumstances of this case, I am not satisfied that the return contains all those facts within the knowledge of the defendant, which are necessary to be brought before the Court, to enable it to decide, whether he is entitled

to a discharge; or in other words, whether he has not now the power to produce the infant, and control those in whose custody she is."

"There is no doubt," he adds, "that an attachment is the proper process to bring the defendant into court."

Anxious that this resort to the inherent and indispensable powers of the Court might be avoided, the judge, in adjourning the case for advisement until the following week, urged upon Mr. Williamson and his associates, that if practicable, the negroes should, in the meantime, be brought before the court.

But the negroes were not produced. They came forward afterwards, some of them, as it is said, before a justice in New York; and by a process of a Pennsylvania State Court, they or some of them were brought forward again in this city, to testify for Mr. Williamson or some of his confederates. But before the Court of the United States, sitting within the same curtilage, at the distance of perhaps a hundred yards, it was not thought necessary or expedient or practicable to produce them. Their evidence, whatever might have been its import or value, was never before the Court, and could have no bearing upon its action.

The decision was announced at the end of the week. It was, that Mr. Williamson's answer was evasive and untrue; that he, therefore, had not obeyed the writ of habeas corpus, and must consequently stand committed as for a contempt of it. The order to that effect having been made, a discussion arose between the counsel as to the propriety of certain motions, which on one side and the other they invited the Court to consider.

It was apparent, that the learned gentleman* who at this time addressed the Court on behalf of Mr. Williamson, as his senior counsel, was imperfectly prepared to suggest any specific action either for the bench, or for his client. His remarks were discursive; and when invited to reduce his motion to writing, according to the rules of practice, he found difficulty in defining its terms. This led to an intimation on the part of the judge, that, inasmuch as the opinion was in writing, and would be printed in the newspapers of the afternoon, it might be best for the counsel to examine its positions before submitting their motion. The intimation was received courteously. The question was asked whether the Court would be in session on one or another of days that were named; and the reply was given, that upon a note being left at the Clerk's office at any time, the judge would be in attendance to hear and consider whatever motion the counsel might see proper to lay before him.

* Mr. Charles Gilpin.

This was the last of the case. No motion was made; no further intimation given on the part of Mr. Williamson or his counsel, of a wish to make one.

Commitments for contempt, like the contempts themselves, may be properly distributed in two classes. Either they are the punishment for an act of misconduct, or it is their object to enforce the performance of a duty. The confinement in the one case is for a fixed time, supposed to be commensurate with the offending; in the other, it is without prescribed limitation, and is determined by the willingness of the party to submit himself to the law.

In the case of Mr. Williamson, the commitment is for a refusal to answer; that is to say, to make a full and lawful answer to the writ of habeas corpus, an answer setting forth all the facts within his knowledge, which are necessary to a decision by the Court, "whether he had not the power to produce the negroes, and control those in whose custody they were." He is now undergoing restraint, not punishment. Immediately after the opinion was read, he was informed, in answer to a remark from his counsel, that the commitment was "*during the contempt:*" the contempt of the party and the order of the Court consequent upon it, determine together.

This is all that I conceive it necessary to say of the strictly judicial action in the case. The opinions, announced by the judge upon other points, may perhaps be regarded as merely *dicta.* But it had appeared from the defendant's declarations when upon the stand, that he supposed Mr. Wheeler's slaves to have become free, and that this consideration justified his acting towards them as he had done. It seemed due to him, that the Court, believing as it did those views to be incorrect, should not withhold an expression of its dissent from them. Several succinct positions were accordingly asserted by the judge: two of which may invite a few additional remarks at this time.

"I know of no statute of Pennsylvania," the judge said, "which affects to divest the rights of property of a citizen of North Carolina, acquired and asserted under the laws of that State, because he has found it needful or convenient to pass through the territory of Pennsylvania; and I am not aware that any such statute, if such a one were shown, could be recognized as valid in a Court of the United States."

The first of these propositions may be vindicated easily. By the common law, as it came to Pennsylvania, slavery was a familiar institution. Only six days after the first legislative assembly met in Philadelphia, and thirteen days before the great charter was signed, the

council was engaged in discussing a law "to prevent the escape of runaways;" and four days later, it sat judicially, William Penn himself presiding, to enforce a contract for the sale of a slave, 1 *Colonial Records*, 63.* The counties of New Castle, Kent, and Sussex, which were at that time and for many years after annexed to Pennsylvania, and governed by the same law, continue to recognize slavery up to the present hour. It survived in our Commonwealth, as a legally protected institution, until some time after the census of 1840; so cautiously did the act of 1780, for its gradual abolition among us, operate upon the vested interests of our own slave owners.

That act excepted from the operation of its provisions the domestic slaves of delegates in Congress, of foreign ministers, of persons passing through, or *sojourning* in the State, and *not becoming residents* therein, provided such slaves were not *retained* in the State longer than six months. The act of 1847 repealed so much of the act of 1780 as authorized masters and owners of slaves to bring and *retain* their slaves within the Commonwealth for the period of six months, or for any period of time whatever. But it did not affect to vary or rescind the rights of slave owners *passing through* our territory. It applied to persons *resident* and persons *sojourning*, who brought and sought to *retain* their slaves here; for over such persons and their rights of property the State had lawful dominion: but it left the right of transit for property and person, over which it had no jurisdiction, just as it was before, and as it stood under the constitution of the United States and the Law of Nations.

This brings me to the second part of the position affirmed in the court's opinion, namely: the right of a citizen of one State to pass freely with his slaves through the territory of another State, in which the institution of slavery is not recognized.

I need not say, that before the compact of union was formed between the States, each of them was an absolutely sovereign and independent community; and that, except so far as their relations to each other and to foreign nations have been qualified by the Federal Constitution, each of them remain so. As such, it is bound by that great moral code, which, because of its universal obligation, is called the Law of Nations. What it could not do if freed from federative restrictions, it cannot do now: every restraint upon its policy, which duty to other States would in that case involve, binds it still, just as if the union had been dissolved or had never been formed.

* "At a council, held at Philadelphia, ye 29th 1st mo., 1683. Present, William Penn, Proprietary, and Governor of Pennsylvania and counties annexed,

All the statists unite in regarding the right of transit for person and property through the territory of a friendly State, as among those which cannot, under ordinary circumstances, be denied. Vattel, B. 2, ch. 10, § 132, 3, 4; Puffendorf, B. 2, ch. 3, § 5, 67; Rutherf. Inst. B. 2, ch. 9; 1 Kent Com. 33, 35. It is true that the right is not an unqualified one. The State may impose reasonable conditions upon its exercise, and exact guaranties against its abuse. But subject to these limitations, it is the right of every citizen of a friendly State.

The right is the same, and admits just the same qualifications, as to person and to property. The same argument, that denies the right of peacefully transmitting one's property through the territories of a State, refuses the right of passage to its owner. And the question, what is to be deemed property in such a case, refers itself necessarily to the law of the State from which the citizen brings it: a different test would sanction the confiscation of property at the will of the sovereign through whose territory it seeks to pass. If one State may decree that there shall be no property, no right of ownership in human beings; another, in a spirit of practical philanthropy only a little more energetic, may deny the protection of law to the products of slave labor; and a third may denounce a similar outlawry against all intoxicating liquids: And if the laws of a State can control the rights of property of strangers passing through its territory; then the sugar of New Orleans, the cotton of Carolina, the wines of Ohio, and the rum of New England may have their markets bounded by the States in which they are produced; and without any change of reasoning, New Jersey may refuse to citizens of

Thos. Holmes, John Richardson, William Clarke, John Simcox, James Harrison, (and eight others.)

"The petition of Nathaniel Allen was read, shewing that he had sould a servant to Henry Bowman, for six hundred weight of beefe, with ye hide and tallow, and six pounds sterling, which ye said Bowman delayed to pay ye said petitioner, shewing likewise that ye said Henry Bowman and Walter Humphrey hired a boat of the said petitioner only for one month, and kept the same boat 18 weeks from the petitioner to his great prejudice: Then it was ordered, that William Clarke, John Simcox and James Harrison should speak to Henry Bowman concerning this matter."—p. 62.

The Great Charter was signed by William Penn, 2d day, 2d mo., 1683, (see p. 72.)

A practice analogous to the Fugitive Slave Law of modern times seems to be referred to in the following minute, at p. 147 of the same volume.

"24th 5 mo., 1685. William Hague requests the secretary, that an hue and cry from East Jersey after a servant of Mr. John White's, a merchant at New York, might have some force and authority to pass this province and territories: the secretary indorsed it, and sealed it with ye seal of this province."

Pennsylvania the right of passing along her railroads to New York. The doctrine is one that was exploded in Europe more than four hundred and fifty years ago, and finds now, or found very lately, its parting illustration in the politics of Japan.

It was because, and only because, this right was acknowledged by all civilized nations, and had never been doubted among the American colonies—because each colony had at all times tendered its hospitalities freely to the rest, cherishing that liberal commerce which makes a brotherhood of interest even among alien States; it was because of this that no man in the convention or country thought of making the right of transit a subject of Constitutional guaranty. Everything in and about the Constitution implies it. It is found in the object, "to establish a more perfect union," in the denial to the States of the power to lay duties on imports, and in the reservation to Congress of the exclusive right to regulate commerce among the States.

This last power of the general government according to the repeated and well considered decisions of the Supreme Court of the United States, from *Gibbons* vs. *Ogden*, 9 Peters, to the *passenger cases*, 7 Howard, applies to intercourse as well as navigation, to the transportation of men as well as goods, of men who pass from State to State involuntary, as of men who pass voluntary; and it excludes the right of any State to pass laws regulating, controling, or *a fortiori*, prohibiting such intercourse or transportation. I do not quote the words of the eminent judges who have affirmed this exposition of the Constitution; but it is impossible to read their elaborate opinions, as they are found in the reports, without recognizing this as the fixed law of the United States.

It needs no reference to disputable annals, to show that when the Constitution was formed in 1787, slaves were recognized as property, throughout the United States. The Constitution made them a distinct element in the distribution of the representative power and in the assessment of direct taxes. They were known and returned by the census, three years afterwards, in sixteen out of the seventeen States then embraced in the Union; and as late as the year 1830, they were found in every State of the original thirteen. How is it possible then, while we assert the binding force of the constitution by claiming rights under it, to regard slave property as less effectively secured by the provisions of that instrument than any other property which is recognized as such by the law of the owner's domicil? How can it be, that a State may single out this one sort of property from among all the rest, and deny to it the right of passing over its soil—passing with its owner, parcel of his

travelling equipment, as much so as the horse he rides on, his great coat, or his carpet bag?

We revolt in Pennsylvania, and honestly no doubt, at this association of men with things as the subjects of property; for we have accustomed ourselves for some years—now nearly fifteen—to regard men as men, and things as things: *sub modo*, however; for we distinguish against the negro much as our forefathers did; and not perhaps, with quite as much reason. They denied him civil rights as a slave: we exclude him from political rights, though a freeman.

Yet no stranger may complain of this. Our constitutions and statutes are for ourselves, not for others. They reflect our sympathies, and define our rights. But as to all the rest of the world; those portions especially, towards whom we are bound by the "supreme law" of the federal constitution; they are independent of our legislation, however wise or virtuous it may be; for they were not represented in our conventions and assemblies, and we do not permit them to legislate for us.

Whether any redress is provided by the existing laws of Pennsylvania for the citizen of another State, whose slaves have escaped from him while he was passing through our territory, it is not my province to inquire. It is quite probable that he may be denied recourse to the Courts, as much so as the husband, or father, or guardian, whose wife, or child, or ward, has run away. He may find himself referred back to those rights, which annex themselves inseparably to the relation he occupies, the rights of manucaption and detainer. These, I apprehend that he may assert and exercise anywhere, and with such reasonable force as circumstances render necessary. And I do not suppose that the employment of such reasonable force could be regarded as a breach of the peace, or the right to employ it as less directly incident to his character of master, than it might be to the corresponding character in either of the analogous relations. In a word, I adopt fully on this point the views so well enforced by Judge Baldwin, in the case of *Johnson* vs. *Tompkins*, Baldw., 578, 9:

"The right of the master to arrest his fugitive slave, is not a solitary case in the law. It may be exercised towards a fugitive apprentice or redemptioner to the same extent, and is done daily without producing any excitement. An apprentice is a servant, a slave is no more: though his servitude is for life, the nature of it is the same as apprenticeship or by redemption, which, though terminated by time, is during its continuance as severe a servitude as that for life. Of the same nature is the right of a parent to the services of his minor children, which gives the custody of

their persons. So, where a man enters bail for the appearance of a defendant in a civil action, he may seize his person at his pleasure, and commit him to prison; or, if the principal escapes, the bail may pursue him to another State, arrest, and bring him back, by the use of all necessary force and means of preventing an escape. The lawful exercise of this authority in such cases is calculated to excite no sympathy: the law takes its course in peace, and unnoticed. Yet it is the same power, and used in the same manner, as by a master over his slave. The right in such case is from the same source, the law of the land. If the enforcement of the right excites more feeling in one case than the other, it is not from the manner in which it is done, but the nature of the right which is enforced, property in a human being for life. If this is unjust and oppressive, the sin is on the makers of laws which tolerate slavery: to visit it on those who have honestly acquired, and lawfully hold property under the guarantee and protection of the laws, is the worst of all oppression, and the rankest injustice towards our fellow men. It is the indulgence of a spirit of persecution against our neighbors, for no offence against society or its laws, but simply for the assertion of their own in a lawful manner.

"If this spirit pervades the country," he goes on to say, "if public opinion is suffered to prostrate the laws which protect one species of property, those who lead the crusade against slavery, may at no distant day find a new one directed against their lands, their stores, and their debts. If a master cannot retain the custody of his slave, apprentice or redemptioner, a parent must give up the guardianship of his children, bail have no hold upon their principal, the creditor cannot arrest his debtor by lawful means, and he, who keeps the rightful owner of lands or chattels out of possession, will be protected in his trespasses.

"When the law ceases to be the test of right and remedy; when individuals undertake to be its administrators, by rules of their own adoption; the bands of society are broken as effectually by the severance of one link from the chain of justice which binds man to the laws, as if the whole was dissolved. The more specious and seductive the pretexts are, under which the law is violated, the greater ought to be the vigilance of courts and juries in their detection. Public opinion is a security against acts of open and avowed infringements of acknowledged rights; from such combinations there is no danger; they will fall by their own violence, as the blast expends its force by its own fury. The only permanent danger is in the indulgence of the humane and benevolent feelings of our nature, at what we feel to be acts of oppression towards human beings, endowed with the same qualities and attributes as ourselves, and brought into being by the same power which created us all; without reflecting, that in suffering these feelings to come into action against rights secured by the laws, we forget the first duty of citizens of a government of laws, obedience to its ordinances."

There was one other legal proposition affirmed in the opinion of this Court, but it cannot need argument. It was, that the question, whether the negroes were or were not freed by their arrival in Pennsylvania, was irrelevant to the issue; inasmuch as whether they were freed or not, they were equally under the protection of the law, and the same obligation rested on Mr. Williamson to make a true and full return to the writ of habeas corpus. Simple and obvious as this proposition is, it covers all the judicial action in the case. The writ required him to produce the negroes, that the Court might pass upon his legal right to carry them off or detain them. What questions might arise afterwards, or how they might be determined, was not for him to consider. His duty then, as now, was and is to bring in the bodies; or, if they had passed beyond his control, to declare under oath or affirmation, so far as he knew, what had become of them: And from this duty, or from the constraint that seeks to enforce it, there can be no escape. (See the argument of Sergeant Glynn, and the remarks of Mr. Justice Gould, in the case of Mr. Wilkes, 2 Wils. 154.)

The application immediately before me, hardly calls for these expanded remarks; though, rightly considered, they bear upon most of the points that were elaborated in the argument upon the question of its reception. It purports to be a suggestion and petition from a person now in Massachusetts, who informs the Court that she is one of the negroes who escaped from Mr. Wheeler, that she did so by Mr. Williamson's counsel, and with the sanction of his presence and approval, but that he never detained her, nor has any one since, and that she has never authorized an application for the writ of habeas corpus in her behalf. Thereupon, she presents to me certain reasons, founded as she supposes in law, wherefore I ought to quash the writ heretofore issued at the relation of Mr. Wheeler.

When application was made to me for leave to file this paper, I invited the learned cousel to advise me upon the question, whether I could lawfully admit the intervention of their client. My thanks are due to them for the ability and courteous bearing with which they have discussed it. But I remain unconvinced.

The very name of the person who authenticates the prayer is a stranger to any proceeding that is or has been before me.* She asks no judicial action for herself, and does not profess to have any right to solicit action in behalf of another: on the contrary, her counsel here assure me ex-

* Neither the petition for the writ of habeas corpus, nor the writ itself, names Jane *Johnson*.

pressly, that Mr. Williamson has not sanctioned her application. She has therefore no status whatever in this Court.

Were she here as a party, to abide its action, she would have a right to be heard according to the forms of law; were she here as a witness, called by a party, her identity ascertained, she might be examined as to all facts supposed to be within her knowledge. But our records cannot be opened to every stranger who volunteers to us a suggestion, as to what may have been our errors, and how we may repair them.

I know that the writ of habeas corpus can only be invoked by the party who is restrained of liberty; or by some one in his behalf. I know, too, that it has been the reproach of the English Courts, that they have too sternly exacted proof, that the application was authorized by the aggrieved party, before permitting the writ to issue. But, as yet, the Courts of the United States have, I think, avoided this error. The writ issues here, as it did in Rome,* whenever it is shown by affidavit that its beneficent agency is needed. It would lose its best efficiency, if it could not issue without a petition from the party himself, or some one whom he had delegated to represent him. His very presence in Court to demand the writ would, in some sort, negative the restraint which his petition must allege. In the most urgent cases, those in which delay would be disastrous, forcible abduction, secret imprisonment, and the like, the very grievance under which he is suffering, precludes the possibility of his applying in person or constituting a representative. The American books are full of cases,—they are within the experience of every practitioner at the bar,—in which the writ has issued at the instance of third persons, who had no other interest or right in the matter than what every man concedes to sympathy with the oppressed. In need only to refer to the case I have quoted from in 3 Mason, and the case of Stacy, in 10 Johnson, for illustrations of this practice.

Of course, if it appears to the Court at any time, that the writ was asked for by an intermeddling stranger, one who had no authority to intervene, and whose intervention is repudiated, the writ will be quashed. But it is for the defendant, to whom the writ is addressed, to allege a want of authority in the relator. The mo-

* "Interdictum omnibus competit.—*Nemo* enim prohibendus est libertati favere."—*Dig. B.* 43, *T.* 29, § 9.

tion to quash cannot be the act of a volunteer. Still less can it come to us by written suggestion, from without our jurisdiction, in the name of the party who is alleged to be under constraint, and whose very denial that she is so may be only a proof that the constraint is effectual.

I may add, that I have examined all the authorities which were brought before me by the learned counsel: with most of them I was familiar before. But there is not one among them, which in my judgment conflicts with the views I have expressed.

The application to enter this paper among the records of the Court, must therefore be refused.

Upon the reading of the above opinion, Mr. Cadwalader, as a member of the bar of the Court, not counsel or attorney in the original or subsequent proceedings, asked leave as amicus curiæ to suggest that, in the Opinion of the Court, an incident of the original proceeding, which has been publicly misrepresented, was not noticed.

"It has been publicly reported," Mr. Cadwalader said, "that after the opinion of the Court, which resulted in Mr. Williamson's commitment, had been read, his counsel applied to the Court for leave to amend his return, which leave was refused. The present suggestion is made under the belief of the member of the bar who makes it, that this report was erroneous, and that what occurred was as follows. When the opinion in the original proceeding was read, the counsel of Mr. Williamson asked if a motion to amend the return would be received, and the Court replied, that the motion must be reduced to writing, and that it could not be received until the Court's order should be filed with the Clerk and recorded; adding that the Court would then receive any motion which the counsel for Mr. Williamson might desire to make. The Court's order was then filed by the Clerk, and entered on record; but no motion to amend was then or afterwards made, although the Court paused to give an opportunity for making it, and invited the counsel then or afterwards, to make any motion which their client might be advised to make."

Judge KANE said:—The recollections of Mr. Cadwalader concur substantially with my own. There certainly was no motion made

by the counsel of Mr. Williamson, for leave to amend his return. A wish was expressed to make such a motion, and the judge asked that the motion might be reduced to writing and filed. But the motion was not drawn out or presented for the Court's consideration, and the Court never expressed any purpose to overrule such a motion, if one should be presented.

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